

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

John Basham	:	<u>Director's Final Findings</u>
853 Oak Hill Branch Road	:	<u>and Orders</u>
South Webster, Ohio 45682	:	

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to John Basham ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3714.12 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of his Site (as hereinafter defined) shall in any way alter Respondent'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 Chapters 3734. and 3714. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of property located at 853 Oak Hill Branch Road, South Webster, Scioto County, Ohio ("Site").
2. Respondent is a "person" as that term is defined in ORC Sections 3714.01(G) and 3734.01(G) and OAC Rules 3745-27-01(B) and 3745-400-01(CC).

3. ORC Section 3734.03 prohibits any person from disposing of "solid wastes by open burning or open dumping, except as authorized by the director of environmental protection...." OAC Rule 3745-27-05(C) further provides that "[n]o person shall conduct, permit, or allow open dumping."
4. OAC Rule 3745-27-01(B)(23) defines "open dumping", in part, as "(a) [t]he deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27 and 3745-37 of the Administrative Code...."
5. ORC Section 3714.06 provides that "[n]o person shall establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license...." OAC Rule 3745-400-04(B), further provides that "[n]o person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code."
6. OAC Rule 3745-400-01(G) defines "construction and demolition debris facility" or "facility" as "any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris."
7. OAC Rule 3745-400-01(F) defines "construction and demolition debris" or "debris", in part, as "those materials resulting from the alteration, construction, destruction, rehabilitation, or repair of any manmade physical structure, including, without limitation, houses, buildings, industrial or commercial facilities, or roadways."
8. The Site is neither licensed nor permitted as a solid waste disposal facility nor licensed as a construction and demolition debris facility in accordance with ORC Chapters 3714. and 3734. and OAC Chapters 3745-27, 3745-37 and 3745-400.
9. On May 8, 2002, Ohio EPA received a complaint stating that Respondent was a contractor who had been disposing of construction and demolition debris at the Site for approximately six to seven years.
10. On May 8, 2002, Ohio EPA conducted an inspection of the Site. In correspondence dated June 6, 2002, Ohio EPA sent a Notice of Violation ("NOV") notifying Respondent of violations of ORC Section 3734.03, OAC Rule 3745-27-05(C), and OAC Rule 3745-400-04(D) for open dumping of solid waste and illegal disposal of construction and demolition debris at the site. OAC Rule 3745-400-04(D) was amended on August

31, 2002 and the rule is now contained in OAC 3745-400-04(B).

11. Ohio EPA conducted follow-up inspections of the Site on July 17, 2002, July 31, 2002, and September 30, 2002.
12. As a result of these inspections, Ohio EPA substantiated that Respondent had disposed of solid waste and construction and demolition debris at the Site.
13. In photographs taken during the inspections in July and September, 2002, Ohio EPA has documented that solid waste and construction and demolition debris were being unlawfully dumped and buried at the Site.
14. In correspondence dated July 18, 2002, August 8, 2002, and October 3, 2002, Ohio EPA sent NOV's notifying Respondent of continuing violations of ORC Section 3734.03, OAC Rule 3745-27-05(C) and OAC Rule 3745-400-04(D). Respondent has not responded to any of the four NOV's issued to by Ohio EPA.

## **V. ORDERS**

Respondent shall achieve compliance with Chapters 3714. and 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Immediately upon the effective date of these Orders, Respondent shall cease acceptance and disposal of solid waste and construction demolition debris at the Site.
2. Respondent shall excavate and remove all waste material, including buried solid waste and construction and demolition debris from the Site and dispose of all waste material at a licensed solid waste disposal facility. From the effective date of these Orders, Respondent shall remove three (3) forty (40) cubic yard dumpsters quarterly until all solid waste and construction and demolition debris is removed from the Site and disposed of at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed and submit a copy of those receipts to Ohio EPA quarterly.
3. Within fourteen (14) days after completion of Order No. 2 and before any grading of the Site, Respondent shall submit to Ohio EPA written notice of completion, along with documentation of proper removal and disposal, including receipts from the solid waste disposal facility. An official of Ohio EPA shall then inspect and photograph the Site to verify Order No. 2 is completed before Respondent commences filling or grading of the Site.

4. Within twenty (20) months of the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$5,120 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapters 3714. and 3734. and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC Section 3734.28. Payments shall be made by official checks made payable to "Treasurer, State of Ohio" for \$256 monthly for twenty (20) months. The official checks 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 Site and a copy of the check shall be sent to Elissa Miller, Legal.

## **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 Solid and Infectious 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 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 Site.

## **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.

### **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  
Southeast District Office  
Division of Solid and Infectious Waste Management  
2195 Front Street  
Logan, Ohio 43138  
Attn: Steve Rine, DSIWM - Unit Supervisor

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**

\_\_\_\_\_  
Christopher Jones  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**John Basham**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_

Director's Final Findings and Orders  
John Basham  
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Title