

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Central Ohio Community Improvement Corporation : Director's Final Findings
300 E Broad Street, Suite 190 : and Orders
Columbus, Ohio 43215 :

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Central Ohio Community Improvement Corporation ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.02(G), 3734.13, and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Bedford I Landfill ("Facility") will in any way alter Respondent's responsibilities under these Orders. Respondent shall provide a copy of these Orders to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the Work performed pursuant to these Orders. Respondent shall ensure that all contractors, subcontractors, laboratories and consultants retained to perform the Work pursuant to these Orders also comply with the applicable provisions of these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3734. and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders or in any appendices, attached hereto and incorporated herein, the following definitions shall apply:

- A. "Facility" shall mean approximately 65.7 acres of an approximately 81.7 acre parcel, parcel number 025-003952-00, which is owned by Respondent and located at 1161 Claycraft Road, in Gahanna, Franklin County, Ohio,
- B. "Work" shall mean all activities Respondent is required and/or are authorized to perform under these Orders.

IV. FINDINGS OF FACT

The Director of Ohio EPA has determined the following findings:

1. The Central Ohio Community Improvement Corporation (the "CIC") is a not-for-profit community improvement corporation established pursuant to ORC Section 1724.
2. The CIC is the "owner" of the Facility located at 1161 Claycraft Road, Gahanna, Franklin County, Ohio, as that term is defined in OAC Section 3745-27-01 (O)(7).
3. The Facility (also known as the "Bedford I Landfill") is a "solid waste disposal facility" as that term is defined in OAC Section 3745-27-01(S)(25).
4. Although the CIC is the current "operator" of the Facility as that term is defined in OAC Section 3745-27-01(O)(5), the CIC did not operate the facility at the time the Facility was accepting waste. Rather, ownership of the Facility was transferred to the CIC from Franklin County on June 23, 2005, following a tax foreclosure almost a decade after waste acceptance ceased.
5. On January 31, 2003, the City of Gahanna ("Gahanna") submitted a proposed "Final Closure/Post-Closure Care Plan ("Final Closure/Post Closure Care Plan") for the Bedford I Landfill." Revisions to the Final Closure/Post Closure Care Plan were submitted on April 18, 2003.
6. The Final Closure/Post Closure Care Plan proposed cap construction for approximately 17 acres of the Facility. The 17 acres were required to close pursuant to OAC Section 3745-27-11, as effective June 1, 1994; however, they were never closed. The remainder of the Facility (approximately 48 acres) was certified closed pursuant to OAC Section 3745-27-11(L), as effective March 1, 1990.
7. On August 25, 2003 the Director approved the Final Closure/Post Closure Care Plan with several conditions. Among the conditions, Gahanna was required to

“close the [F]acility in accordance with the approved Final Closure/Post Closure Care Plan upon obtaining title to the property.”

8. In addition to the Final Closure/Post Closure Care Plan approval on August 25, 2003, the Director also granted an exemption from compliance with the requirement of OAC Section 3745-27-08(C)(16)(b) to install a drainage layer over the 17 acres pursuant to Ohio Revised Code Section 3734.02(G).
9. Gahanna did not take title to the property, and the Final Closure/Post Closure Care Plan has not been implemented to date.

V. ORDERS

Respondent shall achieve compliance with ORC Chapters 3734. and the rules promulgated thereunder and perform the following activities as set forth below:

Final Closure

1. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall begin final closure and corrective measures work at the Facility in accordance with OAC Rule 3745-27-11, OAC Rule 3745-27-10, and the Bedford I Landfill, Franklin County, Final Closure/Post Closure Plan Approval with an ORC Section 3734.02(G) Exemption (“Final Closure/Post-Closure Care Plan”), issued to the City of Gahanna, Ohio, on August 23, 2003 by Ohio EPA (attached hereto and incorporated herein as Attachment A). Respondent may submit a request in writing to the Director for an extension of the commencement date for closure. Respondent shall submit any such request for an extension at least fourteen (14) days prior to the deadline and shall include in the written request for an extension of the commencement date for closure a detailed justification in support of the extension.
2. Within one hundred eighty (180) days after initiating final closure at the Facility, Respondent shall complete final closure at the Facility in accordance with OAC Rule 3745-27-11 and the Final Closure/Post-Closure Care Plan. Respondent shall complete the corrective measures work for the Facility in accordance with OAC Rule 3745-27-10 and the Final Closure/Post Closure Care Plan. Respondent may submit a request in writing to the Director for an extension of the final closure activities. Respondent shall submit any such request for an extension at least fourteen (14) days prior to the deadline and shall include in the written request for an extension of the final closure activities a detailed justification in support of the extension.

3. Not later than ninety (90) days after the completion of final closure at the Facility, Respondent shall submit to the Director, and to the board of health having jurisdiction, a written certification report. The final closure certification shall include verification that the Facility has been closed in accordance with OAC Rule 3745-27-11(J)(1) - (J)(4) and the Final Closure/Post-Closure Plan. Not later than fourteen (14) days after the completion of the corrective measures work for the Facility, Respondent shall certify to the Director that the corrective measure has been completed in accordance with OAC Rule 3745-27-10(F)(15) and the Final Closure/Post-Closure Plan.

Post-Closure Care

4. Following submittal to Ohio EPA of the final closure certification report, Respondent shall begin conducting post-closure care work in accordance with the Final Closure/Post-Closure Care Plan, with the exception of changes to the post-closure ground water monitoring program requirements under Order No. 5.
5. Respondents shall conduct post-closure ground water monitoring in accordance with Section 7 of the Final Closure/Post-Closure Care Plan ("Post-Closure Ground Water Monitoring Plan"), except that:
 - A. Respondent shall collect, at a minimum, eight (8), quarterly, ground water monitoring samples from each sampling site identified in Table 4 of the Post-Closure Ground Water Monitoring Plan. Thereafter, Respondent shall collect ground water monitoring samples from each sampling site identified in Table 4 of the Post-Closure Ground Water Monitoring Plan once every eighteen months of the post-closure care period.
 - B. Respondent shall conduct ground water monitoring utilizing the following "Alternative Parameter List" taken from Table 7, Modified Ohio Appendix I Parameters List, of the Post-Closure Ground-Water Monitoring Plan:
 1. #2 - Arsenic
 2. #3 - Barium
 3. #63 - Ammonia
 4. #64 - Chloride
 5. #65 - Sodium
 6. #16 - #62 - Volatile Organic Chemicals
 7. #67 - Temperature
 8. #68 - pH
 9. #69 - Specific Conductance
 10. #77 - Turbidity

- C. Respondent shall comply with the requirements of the Post-Closure Ground Water Monitoring Plan's "Effectiveness Evaluation" and "Contingency Plan".
- D. Respondent may submit a request in writing to the Director for a reduction in the frequency of ground water monitoring established in paragraph 5.A. of the Orders during the post-closure care period.

Financial Assurance

Respondent shall comply with the financial assurance requirements of OAC Rules 3745-27-15, 3745-27-16, 3745-27-17, and 3745-27-18.

- 6. Within thirty (30) days after the effective date of these Orders, Respondent shall prepare and submit to Ohio EPA written, itemized cost estimates that contain, in current dollars, the costs to conduct final closure, post-closure care, and corrective measures work as specified on pages 3 and 4 of the Final Closure/Post-Closure Care Plan. Ohio EPA may review, approve, and/or require revisions to the cost estimates. Respondent shall revise the estimates and resubmit the estimates for approval within twenty-one (21) days after notification of deficiencies.
- 7. Within sixty (60) days after the effective of these Orders, Respondent shall submit to Ohio EPA an executed and funded financial assurance instrument(s) in the form of a trust fund, surety bond, letter of credit, certificate of insurance, or a combination thereof. These instruments shall meet the requirements of OAC Rules 3745-27-15(F), (G), (H), (I), (J) or (M); 3745-27-16(F), (G), (H), (I), (J) or (M); 3745-27-17, and 3745-27-18(G), (H), (I), (J), (K) or (N). Ohio EPA may review, approve, and/or require revisions to the financial assurance instrument(s).
- 8. The amount(s) of the instrument(s) submitted in Order No. 7, above, shall total \$5,000,000: \$2,500,000 for final closure, \$1,500,000 for post-closure care, and \$1,000,000 for contingencies, in the event of unexpected expenses, including but not limited to, triggering into additional corrective measures or to abate migrating explosive gas. In the event that the Respondent is unwilling or unable to complete final closure, post-closure care or corrective measures at the Facility, the amount assured for contingencies may be used to complete the work.
- 9. After the completion of the final closure and corrective measures work as specified on page 3 of the Final Closure/Post-Closure Care Plan, Respondents may submit in writing a request to the Director to decrease the amount of

financial assurance to \$2,500,000: \$1,500,000 for post-closure care and \$1,000,000 for contingencies. The financial assurance for contingencies shall be maintained at \$1,000,000 for the first ten years of post-closure care. The financial assurance for contingencies shall then be reduced to \$500,000 and maintained at that level until the end of the post-closure care period.

10. As Respondent performs final closure and post-closure care at the Facility, Respondent may request on an annual basis beginning one (1) year after the effective date of these Orders a reduction in the amount of the final closure or post-closure care financial assurance instrument. Any such request for a reduction shall include a revised cost estimate for final closure or post-closure care and a detailed description of amounts expended the previous year for work performed in accordance with these Orders for final closure or post-closure care. Following written approval by the Director, the amount of the final closure or post-closure care financial assurance instrument may be reduced to the amount of the current cost estimate for final closure or post-closure care.

Limitation of Liability

11. Except as provided in Section XIII of these Orders and provided Respondent is in compliance with these Orders, Ohio EPA agrees that it will not seek damages and/or reimbursement from Respondent in an amount greater than the financial assurance amount required in paragraphs 8 and 9 of the Orders for the work required under these Orders for any liability Respondent would have to Ohio EPA as a result of acquiring the Facility on June 23, 2005. In addition, if Respondent does not transfer ownership of the Facility, Ohio EPA will not seek to impose liability for the work required under these Orders on any non-owner tenants of the Facility for any liability a non-owner tenant would have to Ohio EPA as a result of entering into a lease with Respondent. This limitation on liability does not apply to liability for negligence on behalf of the Respondent and/or non-owner tenants, liability associated with violations of applicable laws, the environmental covenant and/or deed restrictions by Respondent and/or non-owner tenants, liability for any contamination which results from actions of the Respondent and/or non-owner tenants, and/or costs associated with work performed under OAC Rule 3745-27-13 and/or measures to protect human health and safety from the migration of explosive gas at or from the Facility.

Explosive Gas Monitoring

12. Respondent shall comply with OAC Rule 3745-27-12 and perform explosive gas monitoring in accordance with that rule and the explosive gas monitoring plan approved by Ohio EPA for the Facility on April 26, 1991, as modified by Section 5

of the Final Closure/Post-Closure Care Plan. Respondent shall prevent the accumulation of explosive gas from the Facility in occupied structures in a concentration that exceeds 25% of methane's LEL and shall prevent the accumulation of explosive gas within the Facility in a concentration that exceeds 100% of methane's LEL.

General

13. Respondent shall comply with OAC Chapter 3745-27 and all other applicable laws with respect to the Facility, except as specifically provided in these Orders or the Final Closure/Post-Closure Care Plan, and shall comply with any emergency orders issued by Ohio EPA regarding the Facility.

Exemption - Background Check

14. Pursuant to ORC Section 3734.02(G), Respondents are hereby exempted from the requirement to file a disclosure statement at least 180 days prior to the date of the proposed change in ownership, as required in ORC Section 3734.42(F)(1) and OAC Rule 109:6-1-02(A)(3), as a result of the past transfer of ownership of the Facility described herein.

VI. ACCESS

Ohio EPA shall have access at all reasonable times, including during business hours, to the Facility and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including but not limited to the following:

- A. Monitoring the Work;
- B. Conducting sampling;
- C. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- D. Monitoring compliance with use restrictions;
- E. Conducting investigations and tests related to the implementation of these Orders; and
- F. Verifying any data and/or other information submitted to Ohio EPA.

To the extent that the Facility or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondent and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within thirty (30) days after the effective date of these Orders, or within thirty (30) days after the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulation.

VII. LAND USE AND CONVEYANCE OF TITLE

Deed Notice

Within thirty (30) days after the effective date of these Orders, Respondent shall record a notice on the deed to all property comprising the Facility with the County Recorder's Office for Franklin County, Ohio. The notice shall reference the presence of a solid waste landfill on the property, the existence of these Orders, and the applicability of the Environmental Covenant for the property. A copy of the recorded notice shall be submitted to Ohio EPA within thirty (30) days after recording the notice. If Respondent conveys any interest in property comprising the Facility, each deed, title, or other instrument shall contain a notice stating that the property is subject to these Orders and the Environmental Covenant and shall contain the following notice:

Ohio EPA makes no representation that the property subject to this notice, if developed for any purpose, including but not limited to commercial and/or industrial development, will be suitable for such purposes. Other regulatory authorities will be responsible for determining any remaining issues such as whether the property as developed is fit for occupancy as a commercial development.

Environmental Covenant

Within thirty (30) days after the effective date of these Orders, Respondent shall record, in the office of the County Recorder of the appropriate county for the property comprising the Facility, a copy of the Environmental Covenant attached to these Orders

as Attachment B. The Environmental Covenant must be recorded in the deed or official records of the County Recorder of Franklin County, Ohio. The terms and conditions of the Environmental Covenant are incorporated into these Orders and shall be binding upon Respondent.

Proof of Filing Environmental Covenant

Within thirty (30) days after filing with the County Recorder the executed Environmental Covenant, Respondent shall certify to Ohio EPA that the Environmental Covenant has been filed for recording, and include with the certification a file and date-stamped copy of the recorded Environmental Covenant. Upon each conveyance by Respondent of an interest in any portion of the Facility, including but not limited to easements, deeds, leases and mortgages, Respondent shall include in the instrument of conveyance a restatement consistent with paragraph 7 of the Environmental Covenant. The terms and conditions of the Environmental Covenant are hereby incorporated into these Orders and shall be binding upon the Respondent. If the Environmental Covenant is violated or breached by Respondent, Respondent shall be in violation of these Orders.

Land Use Self-Reporting Requirement

Respondent shall ensure that no portion of the Facility will be used in any manner that would adversely affect the integrity of any explosive gas monitoring, collection and/or extraction system and/or any engineered components at the Facility, or violate any of the activity and use limitations applicable to the Facility under these Orders. Respondent shall submit on an annual basis, written documentation verifying that the activity and use limitations remain in place and are being adhered to.

Grant of Interest in Property

Prior to each conveyance of an interest in any portion of the Facility, including but not limited to easements, deeds, leases and mortgages, Respondent shall notify the Transferee of the existence of the activity and use limitations on the use of property comprising the Facility, including but not limited to the prohibition on interference with any landfill engineered components, and shall provide a copy of these Orders and the Environmental Covenant to the Transferee. Respondent shall notify Ohio EPA at least thirty (30) days in advance of each conveyance of an interest in any portion of the Facility. Respondent's notice shall include the name and address of the Transferee. Respondent shall also require as a condition of the transfer of any interest in the property that an explosive gas monitoring device be placed in any and all occupied structures on the property and be maintained in good working condition.

Confirmation of Conveyance

Within thirty (30) days after each conveyance of an interest in any portion of the Facility, such Respondent(s) shall submit to Ohio EPA, via certified mail, the following information:

- A. A copy of the deed or other documentation evidencing the conveyance;
- B. The name, address, and telephone number of the new property owner and the name, address, and telephone number of the contact person for the property owner;
- C. A legal description of the property, or the portion of the property, being transferred;
- D. A survey map of the property, or the portion of the property, being transferred;
- E. The closing date of the transfer of ownership of the property, or portion of the property.

VIII. 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 Respondent and/or the Facility.

IX. 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 and/or the Facility.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Solid and Infectious Waste Management
122 S. Front Street, 5th Floor
Columbus, Ohio 43216-1049
Attn: Supervisor, DSIWM

and

Franklin County Board of Health
280 East Broad Street
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. MODIFICATION

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.

XII. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges, defenses and causes of action, except as specifically waived in Section XV. of these Orders.

XIII. INDEMNIFICATION

Respondent agree to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, any acts or omissions of Respondent and/or Ohio EPA, its officers, employees, agents, representatives, or assigns, arising from or related to the Facility and/or the Work required under these Orders. Ohio EPA agrees to provide notice to the Respondent within thirty (30) days after receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

XIV. 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 Respondent's obligations under 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: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be collectively submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice-president.

XV. WAIVER

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 of Respondent's liability for compliance with OAC Rules 3745-27-10, 3745-27-11, and 3745-27-14 at the Facility after termination of these Orders.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and the Respondent hereby waives any and all rights it may have to seek administrative or judicial review of these Orders either in law or equity. Respondent also waives the right to challenge the need for authorization under ORC Section 3734.02(H) and OAC Rule 3734-27-13 prior to any future development or other excavation activities at the Facility not provided for in these Orders, and acknowledges that nothing herein shall be construed as implying that such authorization will be forthcoming.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondent retains the right to intervene and participate in such appeal. In such an event, the Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XVI. EFFECTIVE DATE

The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

XVII. 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**

Joseph P. Koncelik, Director

**IT IS SO AGREED:
Central Ohio Community Improvement Corporation**

Signature

Date