

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

USA Waste Geneva Landfill, Inc. :		<u>Director's Final Findings</u>
4339 Tuttle Road	:	<u>and Orders</u>
Geneva, Ohio 44041	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to USA Waste Geneva Landfill, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 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 Respondent or of the Facility (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 Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Geneva Landfill ("Facility") is located at 4339 Tuttle Road, Geneva, Ashtabula County, Ohio.

2. Respondent is the "owner" and the "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7) and (O)(5), respectively, and is also the license holder for the Facility.
3. The Facility is a "sanitary landfill facility" as that term is defined under OAC Rule 3745-27-01(S)(4) and is authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
4. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
5. In accordance with OAC Rule 3745-27-19(B)(1), "[t]he owner or operator shall conduct all operations at a sanitary landfill facility in strict compliance with the terms and conditions of the solid waste disposal license issued for the facility in accordance with Chapter 3745-37 of the Administrative Code."
6. In accordance with OAC Rule 3745-27-19(B)(2), "[t]he owner or operator shall conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing document(s), including permit(s) to install, a plan approval, an operational report, an approved closure plan, an alteration(s) concurred with in writing by Ohio EPA, or any authorizing final document(s) listed in paragraph (I) of rule 3745-27-09 of the Administrative Code...."
7. In accordance with OAC Rule 3745-27-19(E)(8)(c), the owner or operator shall not accept for disposal or dispose of "[m]aterials that are defined as hazardous wastes pursuant to rule 3745-51-03 of the Administrative Code" at a sanitary landfill facility.
8. In accordance with OAC Rule 3745-27-19(L), "...the owner or operator shall implement a written program at the sanitary landfill facility with procedures that are sufficient to detect and prevent the disposal of regulated hazardous wastes as defined in rule 3745-51-03 of the Administrative Code and polychlorinated biphenyls (PCB) wastes as defined in 40 CFR Part 761, July 1, 2003. The owner or operator shall place the 'PCB and hazardous waste prevention and detection program', inspection records, generator certifications, waste screening information, and notifications required by this rule into the operating record in accordance with rule 3745-27-09 of the Administrative Code."

General Operational Violations

9. Ohio EPA conducted an odor survey at the Facility on March 8, 2000. In correspondence dated May 8, 2000, Ohio EPA notified Respondent it was in violation of OAC Rule 3745-27-19(E)(6)(effective March 1, 1996) for failure to operate the Facility in a manner that controls odors.

10. In response to the May 8, 2000, Notice of Violation ("NOV"), Ohio EPA received correspondence dated May 31, 2000, from Respondent stating the following:
 - a.) Expeditious corrective measure were in progress prior to receiving the NOV;
 - b.) On March 10, 2000, an order was placed with Ecolo of Ohio to purchase two odor suppressant misters and 55 gallons of concentrated deodorizers to resolve the odor issue;
 - c.) The equipment from Ecolo was received on March 27, 2000, and has been in use at the Facility since its arrival.
11. Ashtabula County Health Department conducted an inspection of the Facility on February 26, 2001. In correspondence dated March 1, 2001, Ashtabula County Health Department notified Respondent it was in violation of OAC Rule 3745-27-19(E)(5)(effective March 1, 1996) for failure to control scattered litter.
12. Ohio EPA conducted inspections of the Facility on September 10, 12, 16, and 17, 2002. In correspondence dated October 25, 2002, Ohio EPA notified Respondent of the following violations:
 - a.) OAC Rule 3745-27-19(F)(effective June 1, 1994) for failure to apply daily cover;
 - b.) ORC Rule 3734.11(B) for violating the terms of Permit to Install ("PTI") 02-11359 by failing to apply daily cover; and
 - c.) OAC Rule 3745-27-19(K)(1)(effective March 1, 1996) for failure to control leachate.
13. Ohio EPA conducted inspections of the Facility on March 17 and 18, 2003. In correspondence dated April 14, 2003, Ohio EPA notified Respondent of the following violations:
 - a.) OAC Rule 3745-27-19(E)(26)(effective March 1, 1996) for failure to maintain the integrity of the engineered components of the Facility;
 - b.) OAC Rule 3745-27-19(J)(4)(effective March 1, 1996) for failure to control ponding;
 - c.) ORC Rule 3734.11(B) for violating the terms of PTI 02-11359 by failing to spray dusty loads.

Groundwater Violations

14. In correspondence dated May 11, 2001, Respondent submitted a report titled "*Ground Water Monitoring Report, First Quarter 2001 Sampling Event, February 2001.*" Ohio EPA reviewed the report and in correspondence dated November 1, 2002, informed Respondent of the following violations:
- a.) OAC Rule 3745-27-10(C)(1)(effective June 1, 1994) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality;
 - b.) OAC Rule 3745-27-10(C)(6)(effective June 1, 1994) for failure to use detection limits that are below the Maximum Contaminant Levels ("MCLs");
 - c.) OAC Rule 3745-27-10(C)(7)(c)(effective June 1, 1994) for using detection limits that are greater than the control limits; and
 - d.) OAC Rule 3745-27-10(C)(10)(effective June 1, 1994) for failure to submit the report on time.
15. On October 19, 2001, Ohio EPA received a report from Respondent titled "*Groundwater Monitoring Report, August 2001 Sampling Event.*" Ohio EPA reviewed the report and in correspondence dated November 6, 2002, notified Respondent of the following violations:
- a.) OAC Rule 3745-27-10(B)(3)(effective June 1, 1994) for failure to develop wells that are representative of groundwater quality;
 - b.) OAC Rule 3745-27-10(C)(6)(effective June 1, 1994) for failure to use detection limits below MCLs;
 - c.) OAC Rule 3745-27-10(C)(7)(c)(effective June 1, 1994) for using detection limits that are greater than the control limits; and
 - d.) OAC Rule 3745-27-10(D)(5)(a)(effective June 1, 1994) for failure to sample monitoring well ("MW") 8 during the August 2001 sampling event.

16. On April 18, 2002, Ohio EPA received a report from Respondent titled "*Groundwater Monitoring Report, February 2002 Sampling Event.*" Ohio EPA reviewed the report and in correspondence dated November 4, 2002, notified Respondent of the following violations:
- a.) OAC Rule 3745-27-10(B)(3)(effective June 1, 1994) for failure to develop wells that are representative of groundwater quality;
 - b.) OAC Rule 3745-27-10(C)(1)(effective June 1, 1994) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality;
 - c.) OAC Rule 3745-27-10(C)(6)(effective June 1, 1994) for failure to use detection limits below MCLs; and
 - d.) OAC Rule 3745-27-10(C)(7)(c) (effective June 1, 1994)) for using detection limits that are greater than the control limits.
17. In correspondence dated April 24, 2002, Respondent submitted a report titled "*Background Water Quality Data.*" Ohio EPA reviewed the report and in correspondence dated November 1, 2002, notified Respondent of the following violations:
- a.) OAC Rule 3745-27-10(B)(3)(effective June 1, 1994) for failure to develop wells that are representative of groundwater quality;
 - b.) OAC Rule 3745-27-10(C)(1)(effective June 1, 1994) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality; and
 - c.) OAC Rule 3745-27-10(D)(5)(a)(effective June 1, 1994) for failure to collect and analyze a minimum of four independent samples from new uppermost aquifer system wells within 180 days of the first sample at the well.
18. In correspondence dated July 8, 2002 and July 22, 2002 Respondent submitted additional reports titled "*Background Ground Water Quality Data.*" Ohio EPA reviewed these reports and in correspondence dated November 5, 2002, notified Respondent of the following violations:

- a.) OAC Rule 3745-27-10(B)(3)(effective June 1, 1994) for failure to develop wells that are representative of groundwater quality;
 - b.) OAC Rule 3745-27-10(C)(1)(effective June 1, 1994) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality.
19. In correspondence dated November 12, 2003, Respondent submitted a document titled "*Groundwater Monitoring System Detection Sampling and Analysis Plan.*" Ohio EPA reviewed the document and in correspondence dated March 28, 2005 notified Respondent of the following violations:
- a.) OAC Rule 3745-27-10(C)(1) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality; and
 - b.) OAC Rule 3745-27-10(C)(2)(c) for failure to include a detailed description of the equipment, procedures and techniques to be used in the collection of groundwater samples in the Facility's sampling and analysis plan.
20. Between June 1, 2004, and February 1, 2005, Respondent conducted assessment activities for well SW-4R. Ohio EPA reviewed these activities and in correspondence dated August 10, 2005, notified Respondent it was in violation of OAC Rule 3745-27-10(E)(5)(a)(ii) for failure to sample all wells in the significant zone of saturation in the allotted time.
21. In correspondence dated December 15, 2004, May 5, 2005 and May 20, 2005, Respondent submitted documents titled "*Geneva Landfill - Submittal of Data for October 2004 Semiannual Groundwater Sampling Event,*" "*Geneva Landfill - Amended Report of October 2004 Semiannual Groundwater Analytical Data,*" and "*Proposed Installation of Replacement Detection Monitoring Well SW-8R.*" Ohio EPA reviewed the documents and in correspondence dated October 28, 2005, notified Respondent of the following violations:
- a.) OAC Rule 3745-27-10(C)(1) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality;

- b.) OAC Rule 3745-27-10(C)(1)(a) for failure to follow the procedures documented within the Facility's sampling and analysis plan;
 - c.) OAC Rule 3745-27-10(C)(2)(c) for failure to include a detailed description of the equipment, procedures and techniques to be used in the collection of groundwater samples in the Facility's sampling and analysis plan;
 - d.) OAC Rule 3745-27-10(C)(7)(d) for failure to use statistical limits protective of human health, safety, and the environment;
 - e.) OAC Rule 3745-27-10(C)(8) for failure to determine a statistically significant increase over background levels for nickel at well MR-2R; and
 - f.) OAC Rule 3745-27-10(D)(7)(b) for failure to submit written notification of a statistically significant increase over background.
22. In correspondence dated May 26, 2005, Respondent submitted a report titled "*Semiannual Groundwater Monitoring Report, March 2005 Analytical Results for Groundwater Detection Monitoring.*" Ohio EPA reviewed the report and in correspondence dated October 28, 2005, notified Respondent of the following violations:
- a.) OAC Rule 3745-27-10(C)(1) for failure to implement a groundwater monitoring program that includes sampling and analysis procedures and statistical methods that are protective of human health and the environment and provide an accurate representation of groundwater quality;
 - b.) OAC Rule 3745-27-10(C)(1)(a) for failure to follow the procedures documented within the Facility's sampling and analysis plan; and
 - c.) OAC Rule 3745-27-10(C)(7)(d) for failure to use statistical limits protective of human health, safety, and the environment.

Hazardous Waste Acceptance from Millennium Chemicals, Inc.

23. On January 9, 2004, Respondent contacted Ohio EPA via telephone to inform Ohio EPA that a one liter container of titanium tetrachloride, a hazardous waste, was accepted at the Facility on January 9, 2004. Respondent further informed Ohio EPA that the load containing the titanium tetrachloride had been isolated and would be returned to the generator, Millennium Chemicals, Inc. ("Millennium"), for proper disposal with Ohio EPA's permission.

24. As a follow up to the telephone conversation of January 9, 2004, Respondent sent written correspondence to Ohio EPA dated January 12, 2004, informing Ohio EPA of the acceptance of hazardous waste. Respondent also indicated that the entire waste load containing the titanium tetrachloride as well as the underlying soil cover material was placed in two forty cubic yard boxes and returned to Millennium for proper disposal.
25. In correspondence dated March 15, 2004, Ohio EPA informed Respondent that it was in violation of OAC Rule 3745-27-19(E)(8) for the acceptance of hazardous waste. Ohio EPA further informed Respondent that as the hazardous waste was identified and ultimately removed from the Facility, no further remedial action was necessary.
26. On April 20, 2005, Respondent accepted a waste load from Millennium that contained a five gallon container of titanium tetrachloride. Millennium subsequently went to the Facility and retrieved the container of titanium tetrachloride for proper disposal.
27. In correspondence dated June 13, 2005, Ohio EPA informed Respondent that it was in violation of OAC 3745-27-19(E)(8)(c) for the acceptance of hazardous waste at the Facility.

Hazardous Waste Acceptance from Ashtabula Rubber

28. On May 15, 2002, Ohio EPA Division of Hazardous Waste Management ("DHWM") received a complaint that hazardous material was being improperly managed at Ashtabula Rubber Company ("Ashtabula Rubber").
29. In response to the complaint, Ohio EPA-DHWM conducted inspections of Ashtabula Rubber on May 31, 2002, and June 17, 2002, and determined that, among other violations, Ashtabula Rubber had caused the transportation of hazardous waste paint filters (F003 and D008) to an unpermitted facility.
30. Subsequently, Ohio EPA issued Director's Final Findings and Orders ("DFF&Os") to Ashtabula Rubber to resolve Ashtabula Rubber's hazardous waste violations. A news release pertaining to the DFF&O's was issued by Ohio EPA on June 22, 2004.
31. Upon seeing the June 22, 2004, news release, a concerned citizen contacted Ohio EPA Division of Solid and Infectious Waste Management ("DSIWM") to inquire if any of the hazardous waste generated by Ashtabula Rubber could have been disposed at Respondent's Facility.

32. On July 22, 2004, Ohio EPA-DSIWM conducted an inspection of the Facility to determine if hazardous waste from Ashtabula Rubber was accepted at the Facility for disposal. The inspection included a review of Ashtabula Rubber's disposal receipts and the Facility's daily logs. Based on the review of these documents, Ohio EPA determined that from March 2002, to June 2002, the Facility accepted twelve loads of waste from Ashtabula Rubber that contained the hazardous paint filters. In correspondence dated August 18, 2004, Ohio EPA notified Respondent it was in violation of OAC Rule 3745-27-19(E)(8)(c) for acceptance and disposal of hazardous waste.
33. In response to the NOV, Ohio EPA received correspondence from Respondent dated September 1, 2004, wherein Respondent stated the following:
 - a.) Ashtabula Rubber had not listed paint filters as part of its waste stream on the waste profile required by Respondent prior to disposal;
 - b.) Ashtabula Rubber had never informed Respondent that the paint filters Ohio EPA determined to be hazardous were sent to its Facility;
 - c.) Respondent indicated that Ashtabula Rubber misrepresented the waste it was sending to the Facility; and
 - d.) Respondent stated that it stopped service to Ashtabula Rubber on July 22, 2004, and did not resume service until new special waste profiles were filled out by Ashtabula Rubber and Respondent was allowed to complete a site waste analysis.
34. To date, the hazardous waste accepted from Ashtabula Rubber has not been removed and violations of ORC Chapter 3734. and OAC Rule 3745-27-19 remain at the Facility. Further, Respondent has indicated that it is not able to locate and remove the hazardous waste accepted from Ashtabula Rubber.

V. ORDERS

Respondent shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall evaluate and revise the Facility's PCB and hazardous waste prevention and detection program, which is required by OAC Rule 3745-27-19(L), so as to prevent future occurrences of illegal hazardous waste acceptance at the Facility. At a minimum, the revisions to the PCB and hazardous waste prevention and detection program shall include the retention of all generator waste profiles at the Facility.

2. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit the Facility's revised PCB and hazardous waste prevention and detection program to Ohio EPA for comment, and within fourteen days after receipt of any of Ohio EPA's comments, Respondent shall address Ohio EPA's comments and place the revised document into the operating record.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall pay the amount of seventeen thousand dollars (\$17,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for eleven thousand six hundred seven dollars (\$11,607.00) of the total amount. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
4. In lieu of paying the remaining five thousand three hundred ninety-three dollars (\$5,393.00) of the civil penalty identified in Order No. 3 above, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of five thousand three hundred ninety-three dollars (\$5,393.00) to the Ohio EPA Clean Diesel School Bus Program. Respondent shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for five thousand three hundred ninety-three dollars (\$5,393.00). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Assistant Chief, SIP Development and Enforcement, P.O. Box 1049, Columbus, Ohio 43216-1049.
5. Should Respondent fail to fund the Diesel Bus SEP in accordance with Order No. 4 above, Respondent shall pay Ohio EPA five thousand three hundred ninety-three dollars (\$5,393.00) of the civil penalty in accordance with the procedures in Order No. 3.

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 Enforcement Coordinator 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 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 or his duly authorized representative, if such a representative is responsible for the overall operation of the Facility.

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, Respondent's Facility.

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 or the Facility.

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
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 East Aurora Road
Twinsburg, Ohio 44087

and

Ashtabula County Health Department
Attn: Environmental Health Director
12 W. Jefferson St.
Jefferson, Ohio 44047-1096

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 the 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:

Joseph P. Koncelik, Director

COPY

IT IS SO AGREED:

Geneva Landfill Inc.

Signature

Date

Title