



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

CERTIFIED

February 27, 2014

Mayor Richard Albier  
City of Brooklyn  
7619 Memphis Avenue  
Brooklyn, Ohio 44144

**RE: Proposed Director's Final Findings and Orders – City of Brooklyn**

Dear Mayor Albier:

By letter dated February 25, 2014, Christopher Jones, representing the City of Brooklyn, requests to modify the January 28, 2014 Director's Final Findings and Orders (January Orders). Mr. Jones identifies that, due to significant snow cover that prevented aerial reconnaissance to complete mapping of the City's landfill, the City requests to modify Order Number 1 of the January Orders. Specifically, the City seeks to extend the deadline for compliance with Order Number 1 to March 31, 2014.

In light of the snow cover impairing the ability to produce a topographic map, Ohio EPA agrees that an extension of time is warranted. Attached are proposed Director's Final Findings and Orders that modify the deadline of Order Number 1 of the January Orders to March 31, 2014. If you are willing to accept the proposed Orders as written, please notify Robin Nichols of Ohio EPA's Legal Office at (614) 644-3037 no later than February 27, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig W. Butler".

Craig W. Butler  
Director

Enclosures

cc: Carl Mussenden, DMWM-CO  
Robin M. Nichols, Legal  
Jeff Hurdley, Legal Supervisor-CO  
Bruce McCoy, DMWM Manager/Enforcement Coordinator  
Kelly Jeter, DMWM Enforcement Supervisor  
Cuyahoga County Health Department  
Lynn Sowers, DMWM-NEDO

OHIO E.P.A.

FEB 27 2014

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

By: [Signature] Date: 2-27-14

City Of Brooklyn  
7619 Memphis Avenue  
Brooklyn, Ohio

: Modified Director's  
: Final Findings and Orders  
:

Respondent

**PREAMBLE**

The parties, having engaged in settlement discussions and desiring to avoid litigating disputed claims, have reached an agreement pursuant to Ohio Revised Code ("ORC") 3745.01 to resolve said claims through these Modified Director's Final Findings and Orders ("Orders").

**I. JURISDICTION**

These Orders are issued to the City of Brooklyn ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under ORC Sections 3734.13 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership 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. The Brooklyn Landfill ("Facility") is located at 9400 Memphis Avenue, Brooklyn, Cuyahoga County, Ohio.
2. Respondent is the "owner" of the Facility and "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rules 3745-27-01(O)(7) and (O)(5), respectively.

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)(23).
4. The Respondent is a person as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
5. On January 28, 2014, the Director and Respondent consented to Director's Final Findings and Orders ("January 2014 Orders") to resolve violations at the Facility.
6. Due to significant snow cover since the issuance of the January 2014 Orders, Respondent has requested additional time in which to comply with Order Number 1. In light of the snow cover impairing the ability to produce a topographic map, and in accordance with Section IX of the January 2014 Orders, the Director finds that these Modified Director's Final Findings and Orders are necessary and appropriate to address the issues at the Facility. These Modified Director's Final Findings and Orders are intended to revise and modify Section V of the January 2014 Orders.

#### **V. ORDERS**

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

1. Section V of the January 2014 Orders is hereby modified to replace Order number 1 with the following:
  - "1. By March 31, 2014, Respondent shall submit to Ohio EPA:
    - A. a topographic map of all units of the sanitary landfill facility, certified by a professional skilled in the appropriate disciplines, with updated contour lines on the plan drawing containing information specified in rule 3745-27-19(M)(1) of the Administrative Code, including, but not limited to, the current contours of solid waste placement and the permitted limits identified in PTI #02-4542.
    - B. a comparison of the actual vertical and horizontal limits of emplaced waste to the vertical and horizontal limits of waste placement authorized PTI #02-4542. This comparison shall include a topographic map which delineates the areal extent of emplaced waste that exceeds approved limits. In addition, the topographic map shall contain notes that indicate the following information for waste exceeding authorized limits of waste

placement: the maximum estimated volume, the maximum depth, and the average depth.”

#### **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 Materials and 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: “The City certifies that the information contained in or accompanying this certification is true, accurate and complete.”

This certification shall be submitted by the Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the principal executive officer, the ranking elected official, or other duly authorized employee.

#### **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 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.

#### **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 Materials and Waste Management  
2110 East Aurora Road  
Twinsburg, Ohio 44087

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



Craig W. Butler  
Director

IT IS SO AGREED:

City of Brooklyn



Signature

2/26/14  
Date

RICHARD H. BALBIER  
Printed or Typed Name

MAYOR  
Title