



**Environmental
Protection Agency**

John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nally, **Director**

OHIO E.P.A.

JUN 20 2012

ENTERED DIRECTOR'S JOURNAL

JUN 20 2012

Mr. Frederick V. Hudach
Vice President Operations
Trans Rail America, Inc.
6251 Chestnut Ridge Road
Hubbard, Ohio 44425

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.

By: John R. Kasich Date: 6-20-12

**Re: Trans Rail America, Inc., Trumbull County
Director's Determination Pursuant to Uncodified Section 3.(A) of H.B. 397**

Dear Mr. Hudach:

On February 22, 2007, Ohio EPA received a request submitted pursuant to uncodified Section 3.(A) of Amended Substitute House Bill 397 of the 126th General Assembly. The request, dated February 16, 2007, was prepared by Michael Cyphert of Walter & Haverfield LLP on behalf of Trans Rail America, Inc. The letter requests that the Director make a determination that the license application proposing to establish a construction and demolition debris (C&DD) landfill in Hubbard Township, submitted by Trans Rail America, Inc. (Trans Rail) on May 13, 2004, meets the criteria set forth in uncodified Section 3.(A) of Amended Substitute House Bill 397 of the 126th General Assembly.

At the same time that the letter was submitted, Trans Rail was engaged in litigation with the Trumbull County Health Department over whether its application for a construction and demolition debris facility license application was complete under applicable requirements. The litigation resulted in a decision from the Tenth District Court of Appeals wherein the court noted that Trans Rail contended that a May 31, 2006, letter from the Health Department concerning the issue of completeness "substantially affected its legal rights because the letter foreclosed its right to take advantage of the grandfather clause contained in Amended Substitute House Bill 397." *Trans Rail America, Inc. v. Enyeart*, 2010 Ohio 3012. Following this decision, Ohio EPA had no contact with Trans Rail regarding the February 16, 2007, request until Trans Rail filed a Complaint for Writ of Mandamus before the Ohio Supreme Court on May 30, 2012, demanding that the Director of Ohio EPA act on the February 16, 2007, request.

In accordance with uncodified Section 3.(A), a license application submitted prior to July 1, 2005, shall be reviewed, and the license shall be issued or denied, in accordance with the provisions of Ohio Revised Code (ORC) Chapter 3714 as they existed on July

1, 2005, if the Director determines that this division applies to an applicant. In order for this division to apply, the following four criteria must be satisfied:

1. The applicant has acquired an interest in the property on which the facility will be located on or before May 1, 2005.
2. The applicant has begun a hydrogeologic investigation pursuant to Ohio Administrative Code (OAC) Rule 3745-400-09 prior to submitting the application.
3. The applicant has begun the engineering plans for the facility prior to submitting the application.
4. The application submitted by the applicant would have been determined to be complete if a moratorium had not been in effect.

Ohio EPA has reviewed your request and associated information and has determined that uncodified Section 3.(A) of Amended Substitute House Bill 397 of the 126th General Assembly applies to the license application proposing to establish a construction and demolition debris landfill in Hubbard Township, submitted by Trans Rail America, Inc. on May 13, 2004. Therefore, the application shall be reviewed, and the license shall be issued or denied, pursuant to the provisions of ORC Chapter 3714 as they existed on July 1, 2005.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission (Commission) pursuant to Ohio Revised Code Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Room 222
Columbus, Ohio 43215

Trans Rail America, Inc.
Director's Determination
Page 3 of 3

If you have any questions concerning this document, please contact Jerry Parker of Ohio EPA, NEDO at (330) 963-1186.

Sincerely,



Scott J. Nally
Director

SH/jam

cc: Lynn Sowers, DSIWM-NEDO
Scott Hester, DSIWM-CO
Trumbull County Health Department