

Issuance Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

ENC Demo, Inc.	:	
Attn: John J. Whetterich	:	Director's Final
11601 Grooms Road	:	Findings and Orders
Cincinnati, Ohio 45242	:	

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to ENC Demo, Inc. (ENC) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 3714.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon ENC and successors in interest liable under Ohio law. No change in ownership of ENC shall in any way alter ENC'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 3714 and the rules promulgated thereunder. Unless otherwise stated, all citations of the Ohio Administrative Code (OAC) shall refer to the rules in effect on the date of these Orders.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. ENC is the applicant, as that term is defined in OAC Rule 3745-400-01(A), for a license for the proposed new Schlichter C&DD Landfill (New Facility), a proposed new construction and demolition debris (C&DD) facility on property located at 2611 Hamilton-Cleves Road, Fairfield Township, Butler County, Ohio.

2. On September 30, 1996, OAC Chapter 3745-400 and amendments to OAC Chapter 3745-37 (collectively, the C&DD Rules) became effective. Together, these Chapters regulate the design, construction, licensing, operation, and closure of C&DD disposal facilities.
3. The Director of Ohio EPA (Director) is the jurisdictional licensing authority for C&DD facilities located in Butler County.
4. On September 27, 2001, Schlichter Hauling and Disposal Services, Inc. (Schlichter) – the former operator of the Schlichter Construction and Demolition Debris Landfill (Existing Facility) – submitted a renewal application for the 2002 C&DD operating license.
5. By letter dated October 15, 2001, notification was provided to the Director that the last day on which debris was accepted at the Existing Facility was October 10, 2001, and that debris would no longer be accepted at the Existing Facility.
6. Pursuant to OAC Rule 3745-400-12(B)(1), final closure of a facility is mandatory if the owner or operator declares that debris will no longer be accepted at the facility for disposal.
7. On January 24, 2002, Ohio EPA issued a proposed denial of Schlichter's 2002 operating license application for the Existing Facility. On March 18, 2002, Ohio EPA issued Director's Final Findings and Orders that denied the 2002 C&DD license application submitted by Schlichter for the Existing Facility.
8. OAC Rule 3745-400-12(B)(6) states that final closure of a facility is mandatory if the licensing authority denies a license application as a final action.
9. Because the operator of the Existing Facility declared that no more debris would be accepted for disposal at the Existing Facility, and because Ohio EPA issued Director's Final Findings and Orders that denied the 2002 C&DD license application for the Existing Facility, the Existing Facility is closed. Any subsequent application requesting authorization to initiate disposal of C&DD at the site constitutes a request to establish and operate a new C&DD facility.
10. On March 22, 2002, ENC submitted a 2002 C&DD license application to Ohio EPA to establish and operate a proposed New Facility at the same location as the closed Existing Facility.

11. ENC's 2002 license application was incomplete. Ohio EPA has reviewed the application, and it does not contain the required information necessary for a proper review.
12. On September 30, 2002, ENC submitted a 2003 C&DD license application to Ohio EPA to establish and operate the proposed New Facility. This application did not contain any additional information necessary for a proper review.
13. Because both of the applications referenced in Findings 11 and 12, above, did not contain the necessary information for a proper review, the Director cannot determine whether the applications meet the requirements of OAC Chapters 3745-37 and 3745-400.
14. Pursuant to ORC Section 3714.03, the Director shall not issue a license to establish and operate a new C&DD facility when any portion of the facility is proposed to be located within the boundaries of a sole source aquifer designated by the Administrator of the United States Environmental Protection Agency under the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C.A. 300f, as amended.
15. Pursuant to OAC Rule 3745-400-06(B)(2), no portion of a C&DD facility that was not operating or under construction on July 24, 1990, shall be located within the boundaries of a sole source aquifer designated by the Administrator of the United States Environmental Protection Agency under the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C.A. 300f, as amended.
16. The proposed New Facility is located over a sole source aquifer designated by the Administrator of the United States Environmental Protection Agency under the "Safe Drinking Water Act," 88 Stat. 1660 (1974), 42 U.S.C.A. 300f, as amended.
17. OAC Rule 3745-37-03 establishes the criteria for issuing C&DD operating licenses. Paragraph (C)(1) of that rule states that the licensing authority shall not issue a license unless all portions of the facility meet the requirements of OAC Rule 3745-400-06. Since the proposed New Facility would be located over a sole source aquifer, it does not meet the requirements of OAC Rule 3745-400-06.
18. For the reasons described in Findings 13 and 17, above, the Director cannot determine whether the applications meet the requirements of OAC Chapters 3745-37 and 3745-400, and the proposed New Facility does not meet the criteria

established in OAC Rule 3745-37-03. Therefore, the Director of Ohio EPA cannot issue the 2002 and 2003 C&DD licenses to ENC to establish and operate the proposed New Facility.

## **V. ORDERS**

1. The 2002 and 2003 C&DD license applications submitted by ENC Demo, Inc. to establish and operate the proposed New Facility located at 2611 Hamilton-Cleves Road, Fairfield Township, Butler County, Ohio are hereby denied.
2. ENC Demo, Inc. shall not establish or operate the proposed New Facility.

## **VI. OTHER APPLICABLE LAWS**

All actions taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to ENC.

## **VII. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against ENC for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require ENC to perform additional activities pursuant to ORC Chapters 3714 and 3734 or any other applicable law in the future. Nothing herein shall restrict the right of ENC to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of ENC.

## **IT IS SO ORDERED:**

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Christopher Jones, Director  
Ohio Environmental Protection Agency