



State of Ohio Environmental Protection Agency

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

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

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Old River Valley Place of Nature :
Foundation, Inc. : Director's Final
Attn: Donald Hershner : Findings and Orders
429 Ross Avenue :
Hamilton, Ohio 45013 :

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Old River Valley Place of Nature Foundation, Inc. ("Foundation") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 3714. and Ohio Administrative Code ("OAC") Chapter 3745-37.

II. PARTIES BOUND

These Orders shall apply to and be binding upon the Foundation and any successors in interest liable under Ohio law. No change in ownership of the Foundation, or of the Facility, as hereinafter defined, shall in any way alter the Foundation'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.

IV. FINDINGS

Bob Taft, Governor
Jennette Bradley, Lieutenant Governor
Joseph P. Koncelik, Director

The Director of Ohio EPA ("Director") has determined the following findings:

1. On September 20, 2003, the Foundation submitted an application for a 2004 license to establish and operate the Schlichter C&DD Landfill ("New Facility"), a proposed new construction and demolition debris ("C&DD") facility to be located on property at 2611 Hamilton-Cleves Road, Fairfield Township, Butler County, Ohio. A solid waste landfill ("Solid Waste Facility") and a C&DD facility ("C&DD Facility") were also previously operated on this property.
2. The Foundation is the "applicant" and "owner" as those terms are defined in OAC Rule 3745-400-01.
3. On September 30, 1996, OAC Chapter 3745-400 and amendments to OAC Chapter 3745-37 (collectively the C&DD Rules) became effective. Together, these OAC Chapters regulate the design, construction, licensing, operation, and closure of C&DD landfills.
4. The Director of Ohio EPA is the jurisdictional licensing authority for C&DD facilities located in Butler County.
5. 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.
6. 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.
7. 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.
8. OAC Rule 3745-37-03 establishes the criteria for issuing C&DD facility operating licenses.
9. Pursuant to OAC Rule 3745-37-03(C)(1), the licensing authority shall not issue a license unless all portions of the proposed facility meet the requirements contained in 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.

10. Pursuant to OAC Rule 3745-37-03(C)(3), a license shall not be issued to a C&DD disposal facility unless the owner or operator has maintained compliance with all applicable orders issued by the Director.

11. On December 31, 2002, the Director issued Final Findings and Orders to the Foundation requiring it to conduct a ground water assessment at the C&DD Facility.

12. The Foundation has not maintained compliance with the December 31, 2002, Final Findings and Orders. Ohio EPA issued notices of violation to the Foundation on May 9, 2003; September 30, 2003; December 29, 2003; March 22, 2004; June 28, 2004; September 15, 2004; and January 3, 2005.

13. Because the proposed New Facility would be located over a sole source aquifer, and because the Foundation has not maintained compliance with all applicable orders issued by the Director, the Director cannot issue the 2004 C&DD license to the Foundation to establish and operate the proposed New Facility.

## **V. ORDERS**

1. The 2004 C&DD license application submitted by the Foundation to establish and operate the proposed New Facility at 2611 Hamilton-Cleves Road, Fairfield Township, Butler County, Ohio, is hereby denied.

2. The Foundation shall not establish or operate the proposed New Facility.

## **VI. 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 the Foundation, the proposed New Facility, the C&DD Facility, and/or the Solid Waste Facility.

## **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 the Foundation for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Foundation to perform additional activities pursuant to ORC Chapter 3714. or any other applicable law in the future. Nothing herein shall restrict the right of the Foundation to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Foundation. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur at the Facility to the Foundation, the proposed New Facility, the C&DD Facility, and/or the Solid Waste Facility.

**IT IS SO ORDERED**

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Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency