

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

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

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Village of Ansonia	:	<u>Director's Final</u>
202 North Main Street	:	<u>Findings and Orders</u>
Ansonia, Ohio 45303	:	

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the Village of Ansonia ("Village") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") in accordance with Ohio Revised Code ("ORC") Sections 3734.041 and 3734.13 and Ohio Administrative Code ("OAC") Rule 3745-27-12(I).

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon the Village and its officers, directors, agents, servants, employees, assigns, and successors in interest liable under Ohio law. No change in ownership of the Facility, as hereinafter defined, shall in any way alter the Village'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 ("Director") has determined the following findings:

1. The Village is the owner and operator of the closed Village of Ansonia Landfill ("Facility") located northeast of the Village on State Route 118 in Brown Township, Darke County, Ohio. The Facility is a "solid waste disposal facility" as that term is defined in OAC Rule 3745-27-01(S)(25) and a "sanitary landfill facility" as that term is defined in OAC Rule 3745-27-01(S)(4).

2. The Village is a "person" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(P)(3).
3. The Facility ceased accepting waste and closed in 1985.
4. OAC Rule 3745-27-10(C)(8), effective July 29, 1976, required the operator of a sanitary landfill to file a plat of the site not later than 60 days after closure with the Board of Health having jurisdiction, the County Recorder of the county in which the facility is located, and the Director. The plat shall accurately locate and describe the completed site and include information relating to the area, depth, volume, and nature of the waste materials deposited in the sanitary landfill. The Village has not filed a plat of the Facility.
5. In 2001, the Village confirmed the existence of 11 occupied structures within 200 feet of waste placement at the Facility and an additional 134 occupied structures within 1000 feet of waste placement at the Facility. All 145 "occupied structures", as defined in OAC Rule 3745-27-12(A)(5), have the potential to be impacted by explosive gas that is produced through waste degradation. Landfill gas has the ability to migrate to structures and accumulate in those structures, such that the levels of the gas may become explosive. Therefore, the Village was required to submit an Explosive Gas Monitoring Plan ("EGMP") for the Facility.
6. On December 31, 2001, the Village submitted an EGMP for the Facility pursuant to OAC Rule 3745-27-12, effective June 1994. Ohio EPA approved the EGMP on February 5, 2002.
7. Pursuant to ORC Section 3734.041, after approval of the plan, the owner or operator of the landfill, or, in the instance of a closed landfill, the owner or operator of the closed landfill, or the subsequent owner, lessee, or other person who has control of the land on which the closed landfill is located shall conduct monitoring of explosive gas levels at the landfill or closed landfill, and submit written reports of the results of the monitoring to the director and the board of health of the health district in which the landfill is located in accordance with the approved plan and the schedule for implementation contained in the approved plan.
8. Between August and September 2002, the Village completed installation of eight (8) explosive gas monitoring probes and initiated quarterly explosive gas monitoring at the Facility in accordance with its approved EGMP.

9. The Facility's EGMP defines the explosive gas threshold limit ("EGTL") as one hundred percent of the lower explosive limit ("LEL"), which is 5% methane, for permanent gas probes: GP-1, GP-2, GP-3, GP-4, GP-5, GP-6, GP-7, GP-8, and GP-9. The EGMP contains contingency measures to be implemented upon verification of sustained explosive gas concentrations in the monitoring probes that exceed the EGTL. The Village also installed temporary monitoring probe GP-8B at the Facility.
10. On October 4, 2002, Ohio EPA received the first gas monitoring report from the Village. The explosive gas level at monitoring probe GP-6 exceeded the EGTL on several occasions. Monitoring probe GP-6 had an average explosive gas level of 21% on September 18; 32% on September 19; and 35% on September 26, 2002. [The "average" explosive gas level was calculated by summing the initial explosive gas result and the sustained explosive gas result and dividing by two. The Facility's approved EGMP requires submittal of both initial and sustained explosive gas results. This calculation allows for variability in the two readings.]
11. On June 28, 2003, Ohio EPA received the Second Quarter 2003 Explosive Gas Monitoring Report from the Village. The explosive gas levels of two other explosive gas monitoring probes (GP-5 and GP-9) exceeded the EGTL. Monitoring probe GP-5 had an average explosive gas level of 25%, and monitoring probe GP-9 had an average explosive gas level of 16.5% on June 16, 2003. Each monitoring probe was re-sampled nine (9) minutes later to confirm the readings. Both monitoring probes exhibited increases above the initial readings. GP-5 had an average explosive gas level of 29%, and GP-9 had an average explosive gas level of 29%.
12. In July 2003, the Village initiated monthly contingency explosive gas monitoring for monitoring probes GP-5 and GP-9 in accordance with the approved EGMP.
13. On August 11 and 12, 2003, the Village installed a passive explosive gas venting system at the Facility. The passive gas vents were installed due to ongoing exceedances of the EGTL at the Facility's property boundary.
14. On August 14, 2003, Ohio EPA received the August 2003 Contingency Explosive Gas Monitoring Sampling Report from the Village. Monitoring probe GP-5 had an average explosive gas level of 40% on August 12, 2003. The monitoring probe was re-sampled approximately 90 minutes later, and GP-5 had an average explosive gas level of 34%.

15. On September 15, 2003, Ohio EPA received the Third Quarter 2003 Explosive Gas Monitoring Report from the Village. The explosive gas levels of monitoring probes GP-5 and GP-9 continued to exceed the EGTL. In addition, the explosive gas level of another explosive gas monitoring probe (GP-3) exceeded the EGTL. On September 8, 2003, monitoring probe GP-3 had an average explosive gas level of 5%, GP-5 had an average explosive gas level of 30%, and GP-9 had an average explosive gas level of 29%. Each monitoring probe was re-sampled at least 45 minutes later. Monitoring probe GP-3 had an average explosive gas level of 5%, GP-5 had an average explosive gas level of 18%, and GP-9 had an average explosive gas level of 25%.
16. On March 26, 2004, Ohio EPA received the First Quarter 2004 Explosive Gas Monitoring Report from the Village. The explosive gas levels of two other explosive gas monitoring probes (GP-7 and GP-8B) exceeded the EGTL, as well as GP-3, GP-5, and GP-9. On March 23, 2004, monitoring probe GP-7 had an average explosive gas level of 22%, GP-3 had an average explosive gas level of 5%, GP-5 had an average explosive gas level of 39%, and GP-9 had an average explosive gas level of 46%. Temporary monitoring probe GP-8B is located in the gravel surrounding the buried sewer line that passes along the western boundary of the Facility between monitoring probes GP-4 and GP-8 and occupied structures. Temporary monitoring probe GP-8B had an average explosive gas level of 9%. Three monitoring probes were re-sampled at least two hours later. None of the monitoring probes decreased in explosive gas levels, and one monitoring probe increased. GP-3 had an average explosive gas level of 98%, GP-5 had an average explosive gas level of 39%, GP-7 had an average explosive gas level of 22%, and GP-9 had an average explosive gas level of 46%.
17. Since June 2003 (21 total explosive gas monitoring events), monitoring probes GP-5, GP-7, and GP-9 have consistently exceeded the EGTL: GP-5 has had exceedences on 18 of 21 events with an average explosive gas level of 30%, GP-7 has had exceedences on 10 of 21 events with an average explosive gas level of 17%, and GP-9 has had exceedences on 20 of 21 events with an average explosive gas level of 35%.
18. Since June 2003 (21 total explosive gas monitoring events), monitoring probe GP-3 has occasionally exceeded the EGTL: GP-3 has had exceedences on 4 of 21 events with an average explosive gas level of 14%.

19. The Facility had been in monthly contingency explosive gas monitoring due to exceedances of the EGTL in explosive gas monitoring probes since July 2003. Since the Village has yet to demonstrate that the Facility is not generating explosive gas or that explosive gas is not migrating toward occupied structures, the Village is still responsible to perform contingency monitoring and remediation in accordance with the approved EGMP.
20. In November 2004, the Village acquired two (2) strips of land, each fifty (50) feet wide, adjacent to the western portion of the Facility, between the Facility and occupied structures located within 200 feet of the Facility. The Village acquired the land to demonstrate that explosive gas was not migrating toward the occupied structures from the Facility. During initial borings and the monitoring investigation of the newly acquired property, the Village discovered that waste and explosive gas were present.
21. On January 5, 2005, Ohio EPA, SWDO, DSIWM staff met with Mr. Brian Wilcox, the Village Administrator, to discuss explosive gas issues at the Facility. During this meeting, Mr. Wilcox informed Ohio EPA that he had become aware that sometime during the Facility's operation as a landfill, waste intended for the landfill had been placed on an adjacent property (west of the Facility) owned by the Facility operator. The Facility operator is since deceased, and the property is currently owned by Ms. Marlene Hayes. Ohio EPA requested that, at a minimum, the Village offer an explosive gas alarm to the occupant of the home on Ms. Hayes' property.
22. Also, on January 5, 2005, Mr. Wilcox asked, on behalf of the Village, to be released from the monthly contingency explosive gas monitoring, since the explosive gas could be from waste on Ms. Hayes' property. Ohio EPA advised Mr. Wilcox to continue explosive gas monitoring to be protective of human health and the environment.
23. On March 14, 2005, Ohio EPA received correspondence from Mr. Brian Wilcox, the Village Administrator, indicating that the Village would no longer perform monthly contingency monitoring, as it was not clear whether the explosive gas was being generated by the Facility or by waste located on the property now owned by Ms. Hayes. Mr. Wilcox represented to Ohio EPA that since the Village was not responsible for and did not have authority over the private property, explosive gas monitoring at the Facility would be inconclusive.
24. On June 23, 2005, Ohio EPA met with Ms. Marlene Hayes regarding her property west of the Facility. At that time, Ms. Hayes provided a Fiduciary Deed with a

notation stating that part of her property at one time was used as a landfill by the Village of Ansonia.

25. On July 27, 2005, Ohio EPA received correspondence from the Village stating that the Village would no longer perform quarterly explosive gas monitoring, thus ceasing all explosive gas monitoring at the Facility in violation of its approved EGMP and ORC Section 3734.041.
26. OAC Rule 3745-27-12(G) states that after monitoring for twenty (20) years after closure of a sanitary landfill facility, the owner or operator may submit a written request to the director for authorization to discontinue monitoring and to abandon any permanent monitors in accordance with the approved "explosive gas monitoring plan." Authorization to discontinue monitoring and abandon any permanent monitors may be granted upon the Director's finding that there is no significant likelihood of future explosive gas formation and migration sufficient to require contingency procedures. The Village has not made this request of the Director, and the Director has not authorized the Village to discontinue explosive gas monitoring at the Facility.
27. ORC Section 3734.041(D) and OAC Rule 3745-27-12(I) specify that upon the director finding that explosive gas formation and migration threaten human health, safety, or the environment, he may order the owner or operator to perform such measures to abate or minimize the formation or migration of explosive gas.
28. Because explosive gas has been detected at the Facility, and at or near the Facility boundary, at levels equaling or exceeding the EGTL, and because the Village is not implementing the contingency measures detailed in the Facility's EGMP, the formation and migration of explosive gas from the Facility constitute a threat to human health, safety, and the environment, and the immediate abatement or minimization of explosive gas formation and migration is required.

## **V. ORDERS**

1. Not later than thirty (30) days after the effective date of these Orders, the Village shall submit a plan to Ohio EPA detailing how the Village will delineate the limits of waste placement on the Facility and on property adjacent to the Facility ("Property"). Not later than one hundred twenty (120) days after the effective date of these Orders, the Village shall delineate the limits of waste placement on the Facility and on the Property and shall submit a report, which includes, at a minimum, a summary of the activities performed and a detailed plan drawing(s) delineating the limits of

waste placement on the Facility and on any adjacent properties containing waste, to Ohio EPA and the Darke County General Health District.

2. The Village shall perform such activities as necessary, including but not limited to, actively monitoring for explosive gas, to determine the full extent of explosive gas formation and migration at the Facility and on adjacent properties. Not later than one hundred eighty (180) days after the effective date of these Orders, the Village shall submit a report to Ohio EPA and the Darke County General Health District detailing the activities performed and the results of all explosive gas monitoring performed at the Facility and on any adjacent properties.
3. The Village shall monitor any probes or other explosive gas monitoring locations installed during activities performed in accordance with Order Number 2, above, not less than quarterly until relieved of this obligation by the Director.
4. The Village shall resume and continue quarterly explosive gas monitoring and implement monthly contingency monitoring for any explosive gas monitoring location where explosive gas is detected at a level exceeding the EGTL, in accordance with the approved EGMP.
5. The Village shall continue explosive gas monitoring in accordance with the approved EGMP until the Village is authorized by the Director to cease explosive gas monitoring pursuant to OAC Rule 3745-27-12(G).
6. The Village shall maintain the passive explosive gas venting system at the Facility, as referenced in Finding Number 13.

## **VI. ACCESS**

To the extent that the Property to which access is required for the implementation of these Orders is owned or controlled by persons other than the Village, the Village shall use its best efforts to secure from such persons access for the Village and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by the Village shall be provided to Ohio EPA upon request. If any access required to implement these Orders is not obtained within thirty (30) days after the effective date of these Orders, or within thirty (30) days after the date Ohio EPA notifies the Village in writing that additional access beyond that previously secured is necessary, the Village shall promptly notify Ohio EPA in writing of the steps the Village has taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist the Village in obtaining access.

## **VII. TERMINATION AND SATISFACTION**

The Village's obligations under these Orders shall terminate when the Village certifies in writing and demonstrates to the satisfaction of Ohio EPA that the Village has performed all obligations under these Orders and the Chief 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 the Village of the obligations that have not been performed, in which case the Village shall have an opportunity to address any such deficiencies and seek termination as described above.

The notarized 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 the Village to Ohio EPA and shall be signed by a responsible official of the Village. For purposes of these Orders, a responsible official is a representative from the Village of Ansonia or its authorized designee.

## **VIII. 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 signatory to these Orders for any liability arising out of or relating to the Facility and/or Property.

## **IX. 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 Village, Facility, and/or Property.

## **X. NOTICE**

All documents required to be submitted by the Village pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southwest District Office  
Division of Solid and Infectious Waste Management  
401 East Fifth Street  
Dayton, Ohio 45402-2911  
Attn: Supervisor

Darke County General Health District  
300 Garst Avenue  
Greenville, Ohio 45331  
Attn: Roberta Broerman, Environmental Health Director

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. 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 Village for non-compliance with these Orders and/or for the violations contained herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Village to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the Village 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 Village. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

#### **IT IS SO ORDERED**

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Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency