

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

City of Fairborn
44 West Hebble Avenue
Fairborn, Ohio 45324

:
:
:

Director's Final
Finding and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to the City of Fairborn ("City") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") pursuant to Ohio Administrative Code ("OAC") Rules 3745-27-12(I) and 3745-27-12(J).

II. PARTIES

These Orders shall apply to and be binding upon the City and its officers, directors, agents, servants, employees, assigns and successors in interest.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in Ohio Revised Code ("ORC") Chapter 3734. and the rules promulgated thereunder. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of these orders.

IV. FINDINGS OF FACT

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

1. The City is the owner and operator of the closed Fairborn Landfill ("Facility") located in the southwest quadrant of the intersection of Beaver Valley Road and Interstate 675 in Greene 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. On December 31, 1988, the Facility ceased accepting waste.
3. By written correspondence dated January 13, 1989, the City was informed by Ohio EPA of its requirements to submit an explosive gas monitoring plan for the Facility.
4. On February 1, 1989, an explosive gas monitoring plan ("EGMP") was submitted by the City for the Facility.
5. On August 13, 1992, Ohio EPA received the first gas monitoring report from the City. The methane levels at two of the monitoring probes exceeded the lower explosive limit ("LEL") for methane. To date, the methane levels in these two probes and several other monitoring wells continue to exceed the LEL.
6. On July 31, 1995, Ohio EPA sent a notice of deficiency to the City in reference to the EGMP submittal.
7. On March 25, 1996, the City submitted a revised EGMP for the Facility.
8. On April 23, 1996, Ohio EPA sent a notice of deficiency to the City in reference to the revised EGMP submittal.
9. By correspondence received by Ohio EPA on December 12, 1996, the City proposed installing additional explosive gas monitoring probes at the Facility. Ohio EPA commented on the proposal by letter dated December 19, 1996.
10. By letters dated September 30, 1997, and June 10, 1998, Ohio EPA requested updates on the status of the EGMP.
11. By letter dated September 28, 1999, Ohio EPA requested that the EGMP be submitted within 30 days.
12. By letter dated October 21, 1999, the City stated that it had received verbal agreement to install three (3) of the four (4) explosive gas monitoring probes off the Facility property.
13. By correspondence dated November 17, 1999, and January 29, 2001, the City was notified that it was in violation of OAC Rule 3745-27-12(A)(3), as effective on June 1, 1994, for not submitting an approvable EGMP. In addition, the correspondence stated that the City was to immediately take appropriate action to abate explosive gas migration.

14. By correspondence dated December 14, 1999, the City stated that a consultant was retained to complete the EGMP.
15. On June 6, 2000, the City notified Ohio EPA that two explosive gas monitoring probes were installed to the north of the landfill property boundary, and the City was making an effort to complete the plan.
16. During a telephone conversation on February 16, 2001, the City stated that a consultant was preparing a revised EGMP, and they are investigating alternatives for mitigating the existing gas migration.
17. On June 1, 2001, the City submitted a revised EGMP, which included an explosive gas remediation plan.
18. In August and September 2001, the City installed a passive gas extraction system consisting of six (6) gas relief wells along the north boundary and one (1) in the vicinity of GMP 2 on the east side. The City also installed and began monitoring a new probe (Probe 15) installed to the east of Probe 2.
19. In November 2002, the City initiated installation of additional gas relief wells in preparation for converting the passive relief system to an active gas extraction system along the north property boundary.
20. In October 2003, the City initiated full time (24 hours/day, 7 days/week) operation of the active gas extraction system.
21. Between August 31 and October 5, 2004, the City installed eight (8) new GMPs and one replacement GMP. Seven new probes (GMPs 16 through 22) were installed along the west boundary of the landfill property since new development to the west would bring occupied structures within 1000 feet of waste placement. A new probe (GMP 23) was installed to the east of GMP 6 to assess whether or not gas was migrating beyond GMP 6 and off property. The replacement probe (GMP 7B) replaced the damaged and inoperable GMP 7A.
22. OAC Rule 3745-27-12(A)(3) requires that the owner or operator, subsequent owner, lessee, or other person who has control of the land on which the closed landfill is located, of any previously licensed closed landfill, that ceased acceptance of waste prior to June 1, 1994, and after July 1, 1970, and is so situated that a residence or other occupied structure is located within 1,000 feet horizontal distance from emplaced wastes, shall submit an explosive gas monitoring plan for the landfill or closed landfill to the director for approval.

23. Based on site inspections and submitted documentation, 26 occupied structures exist within 1,000 feet from the limits of waste placement.
24. OAC Rule 3745-27-12(I) states that upon the director's finding that explosive gas formation and migration threaten human health or safety or the environment, he may order the owner or operator to perform such measures to abate or minimize the formation and migration of explosive gas.
25. OAC Rule 3745-27-12(J) states that the director may require the installation of additional punch bar stations or permanent monitors or the abandonment of permanent monitors as necessary to monitor explosive gas pathways or eliminate the potential contamination of ground water.
26. Pursuant to OAC Rule 3745-27-12(I), the director has determined that explosive gas formation and migration constitutes a threat to human health, safety, and the environment, and the immediate abatement of the explosive gas formation and migration is required.

V. ORDERS

1. Pursuant to OAC Rules 3745-27-12(I) and 3745-27-12 (J), the City shall abate or minimize the formation and migration of explosive gas at the Facility such that the threat to human health, safety, or the environment no longer exists. At a minimum, the City shall perform such measures as specified in Orders Number 2 through 10, below. The City shall perform the measures until released from the obligations pursuant to Section VI of these Orders.
2. Within sixty (60) days after the effective date of these Orders, the City shall submit any necessary revisions to the EGMP, specified in Finding Number 23 above, for approval pursuant to OAC Rule 3745-27-12(A)(3).
3. Within thirty (30) days after the effective date of these Orders, the City shall notify, in writing, all persons owning structures that: (1) are within 1,000 feet of the limits of the waste placement of the explosive gas migration occurring at the Facility and (2) in a direction in which actual gas measurements (i.e., where gas probe(s) between the buried waste and the occupied structure have readings above the explosive gas threshold) indicate migration in the direction of the occupied structure. The City shall provide Ohio EPA a copy of each letter mailed pursuant to this Order. Within thirty (30) days after a person completes construction of a new structure meeting the above criteria (i.e., distance and direction), the City shall notify, in writing, that

person of the explosive gas migration occurring at the Facility until such time that the gas remediation proves effective. The City shall provide Ohio EPA a copy of each letter mailed pursuant to this order.

4. If, by October 31, 2005 explosive gas levels in the monitoring probes at the Facility have not declined below the lower explosive limit ("LEL") and then remain below the LEL for a period of at least sixty (60) days beyond October 31, 2005, the City shall, within sixty (60) days of October 31, 2005, submit a proposed remediation plan to Ohio EPA outlining a remedy to abate the explosive gas problem and to ensure there is no threat to human health or safety or the environment. Upon written approval of the remediation plan by Ohio EPA, the City shall, within ninety (90) days, begin implementing the work detailed in the remediation plan in accordance with the schedule(s) contained therein. Schedules contained in the remediation plan may be amended by mutual agreement of the parties. The remediation plan shall include, at a minimum, all of the following:

- a. A presentation and discussion of all explosive gas migration pathways identified pursuant to OAC Rule 3745-27-12(D)(2)(c)(iv); and
- b. All pathways identified through investigations performed by the City or by any other person; and
- c. A detailed presentation, with construction drawings where applicable, of how explosive gas migration will be abated or minimized for each pathway.

The detailed discussion shall also include an analysis of the potential hazard associated with each pathway as determined by each pathway's beginning and ending point, the monitoring activity performed or to be performed on each pathway or potential migration pathway, and any specific justifications used for not monitoring or performing investigations on any pathway or potential migration pathway. This plan is to be incorporated into the EGMP.

5. If, after 330 days (i.e., 9 months + 60 days) of substantial completion of the remediation activities, explosive gas levels in the monitoring probes at the Facility have not declined below the LEL for a period of at least 60 days, then the City shall submit a new proposed remediation plan to Ohio EPA outlining a remedy to abate the explosive gas problem. Again, upon written approval of the remediation plan by Ohio EPA, the City shall, within 90 days, begin implementing the work detailed in the remediation plan in accordance with the schedule(s) contained therein. Upon substantial completion of the remedial activities, the City will again have 330 days to reduce the explosive gas levels in the monitoring probes at the Facility below the

- LEL for a period of at least 60 days. This 330-day cycle will repeat itself until such time that the gas remediation proves effective.
6. Within sixty (60) days of substantial completion of the remediation activities required by Orders 4 and 5, the City shall submit to Ohio EPA an updated EGMP.
 7. All explosive gas monitoring probes at the Facility, installed before and after the effective date of these Orders, shall be monitored monthly at intervals not to exceed forty (40) days. If accumulated data indicates a particular probe is consistently below the explosive gas threshold, the City may request permission from Ohio EPA's Southwest District Office ("SWDO") to revert to semi-annual for that particular probe. The monthly monitoring for each probe shall continue until each is released from the monthly monitoring requirement by the SWDO or these Orders terminate in accordance with Section VI, at which point the City shall implement the approved EGMP.
 8. The City shall monitor all parameters identified in OAC Rule 3745-27-12(E)(2) for each monitoring event pursuant to these Orders or the approved EGMP until these Orders terminate in accordance with Section VI, at which point the City shall continue to implement the approved EGMP.
 9. The City shall submit all explosive gas monitoring data on a monthly basis. The data shall be submitted to Ohio EPA and the Greene County Combined Health District no later than the 15th calendar day of each following month.
 10. Pursuant to OAC Rules 3745-27-12(I) and 3745-27-12 (J), the Director may, based upon the information submitted in the report, order the City to implement additional measures, including submittal of an additional explosive gas remediation plan, in order to abate or minimize the formation and migration of explosive gas at the Facility.

VI. TERMINATION

These Orders shall terminate when the City has certified, in writing, that explosive gas formation and migration at the facility has been abated or minimized such that the threat to human health, safety, or the environment no longer exists, and the City has received written concurrence of such certification from Ohio EPA. The criteria for requesting termination is as follows: the results of six (6) consecutive 30(+/-10) day interval sampling events are all less than 100% LEL (<5% methane by volume) at the Point of Compliance (i.e., the landfill boundary).

Notarized certifications shall be signed by a responsible official of the City. The certification shall make the following attestation: "I certify that to the best of my knowledge the information contained in or accompanying this certification is true, accurate and complete."

For purposes of these Orders, a responsible official is a representative from the City of Fairborn or an authorized designee.

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 signatory to these Orders for any liability arising out of or relating to the operation of the 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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability of Ohio EPA's right to enforce any other statutes or regulations applicable to the Facility. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required pursuant to these Orders shall be submitted to the following addresses:

Ohio Environmental Protection Agency
Southwest District Office
401 East Fifth Street
Dayton, Ohio 45402-2911
Attn: Unit Supervisor, DSIWM

Ohio Environmental Protection Agency
DSIWM-Central Office
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Unit Supervisor, DSIWM, CMEU

Greene County Combined Health District

P.O. Box 250
Xenia, OH 45385
Attn: Debbie Leopold, Environmental Director

X. 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 penalties against the City for non-compliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the City to perform additional activities pursuant to ORC Chapters 3734. and 6111. or any other applicable law in the future. Nothing herein shall restrict the right of the City to raise any administrative, legal or equitable claim or defense with respect to such further actions, which Ohio EPA may seek to require the City. 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:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency

IT IS SO AGREED:

City of Fairborn

Signature

Date

Printed or Typed Name

Title