

Issuance Date: June 16, 2006

Effective Date: July 7, 2008

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Norton Environmental Company	:	<u>Director's Final</u>
6200 Rockside Woods Boulevard	:	<u>Findings and Orders</u>
Independence, Ohio 44131	:	

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Norton Environmental Company ("NEC"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 3734. and Ohio Administrative Code ("OAC") Chapter 3745-27.

II. PARTIES BOUND

These Orders shall apply to and be binding upon NEC and any successors in interest liable under Ohio law. No change in ownership of NEC, or of the Facility as hereinafter defined, shall in any way alter NEC'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. NEC is the operator of the Mount Eaton Sanitary Landfill ("Facility"), a municipal solid waste ("MSW") disposal facility, located at 8544 TR 105, Paint Township, Wayne County, Ohio. The property is owned by Mt. Eaton Reclamation, Inc. and Twilight Mining, Inc.
2. On June 7, 1995, Ohio EPA issued Permit to Install ("PTI") Number 02-6450 to the Wayne County Commissioners, the former operator of the Facility, for the lateral expansion of the Facility.

3. On October 12, 2001, NEC submitted PTI application number 02-15841 to Ohio EPA for the lateral and vertical expansion of the Facility.
4. On June 22, 2004, Ohio EPA issued draft PTI number 02-15841 to NEC for the lateral and vertical expansion of the Facility.
5. On March 31, 2005, Ohio EPA, Northeast District Office ("NEDO") received Mount Eaton Landfill's 2004 Annual Report.
6. On April 4, 2005, Ohio EPA verbally informed Mr. Steve Viny, NEC, that the 2004 Annual Report did not contain any information in "Table XIV.a Remaining Capacity as of the End of Business on December 31, 2004." On the same day, NEC informed Ohio EPA that the Facility was overheight and out of capacity and that the Facility would close its gates to further acceptance of solid waste.
7. On April 11, 2005, Ohio EPA sent a Notice of Violation/Notice of Deficiency to Mr. Freeman Mullet and Mr. Steve Viny citing violations and deficiencies in the 2004 Annual Report.
8. On April 29, 2005, Ohio EPA, NEDO received the response to the April 11, 2005 Notice of Violation/Notice of Deficiency regarding the 2004 Annual Report. A completed "Table XIV.a Remaining Capacity as of the End of Business on December 31, 2004," was submitted, indicating that the Facility had zero (0) cubic yards of remaining gross airspace as of December 31, 2004. Additionally, a revised topographic map was submitted that indicated that the Facility was overheight.
9. OAC Rule 3745-27-11(C)(2)(b) states: "It is mandatory to begin closure activities for a non contiguous unit(s) of a sanitary landfill facility upon the occurrence of any of the following: . . . All approved limits of solid waste placement for the noncontiguous unit(s) have been reached, as specified in the plan approval, operational report, approved permit(s) to install, or other authorization of the director."
10. The final grades of waste placement at the Facility were reached during 2004 and Mt. Eaton Landfill is subject to mandatory closure pursuant to OAC Rule 3745-27-11(C)(2)(b).
11. NEC ceased acceptance of waste at the Facility on or around April 7, 2005.
12. OAC Rule 3745-27-02(A) states "no person shall establish or modify a solid waste facility or infectious waste treatment facility without obtaining a permit to install issued by the director."

13. OAC 3745-27-02(C) states "For the purposes of this rule, "modify" or "modification" means: (1) A sanitary landfill facility undergoing: (b) A substantial horizontal or vertical increase in the limits of waste placement as that term is defined in rule 3745-27-01 of the Administrative Code, including but not limited to those modifications specified in division (A)(2)(d) of section 3734.05 of the Revised Code."
14. NEC failed to cease acceptance of waste upon reaching final grades and placed a significant amount of waste outside the authorized limits of waste placement. Therefore, NEC modified the Facility without obtaining a permit to install.
15. To date, NEC has failed to commence closure activities in accordance with OAC Rule 3745-27-11.
16. On February 8, 2006, Ohio EPA issued Final Findings and Orders for the Facility due to activities at the Facility resulting in hydrogen sulfide being emitted as a fume, gas, or vapor at concentrations that pose a public nuisance and result in violations of OAC Rule 3745-15-07(A) and ORC Section 3704.05(G).
17. OAC Rule 3745-27-07 contains additional criteria for the approval of a sanitary landfill facility permit to install application. OAC Rule 3745-27-07(A) states:

"General criteria. The director shall not approve any permit to install application for a sanitary landfill facility unless the director determines all of the following:

 1. Establishment or modification and operation of the sanitary landfill facility will not violate Chapter 3704., 3734., or 6111. of the Revised Code.
 2. The sanitary landfill facility will be capable of being constructed, operated, closed, and maintained during the post-closure care period in accordance with Chapter 3745-27 of the Administrative Code and with the terms and conditions of the permit.
 3. The applicant, and/or the person(s) listed as owner and operator if the owner and operator are not the applicant, who has been or is currently responsible for the management or operation of one or more solid waste facilities, has managed or operated such facility in substantial compliance with applicable provisions of Chapters 3704., 3734., 3714., and 6111. of the Revised Code, and any rules, permits or other authorizations issued thereunder, and has maintained substantial compliance with all applicable orders issued by the director, the environmental review appeals commission, or courts having jurisdiction in accordance with Chapter 3746-13 of the Administrative Code, in the course of such previous or current management or operations. The director may take into consideration whether substantial compliance has been maintained with any applicable order from a board of health maintaining

a program on the approved list and any other courts having jurisdiction.

4. The person listed as operator meets the requirements of division (L) of section 3734.02 of the Revised Code and rules adopted thereunder.
5. The applicant meets the requirements of sections 3734.42 to 3734.44 of the Revised Code and rules adopted thereunder.”
18. ORC Section 3734.11(B) states “No person who holds a permit or license issued under this chapter shall violate any of the terms and conditions of the permit or license.”
19. NEC has placed waste at the Facility within the disposal areas proposed, and in areas outside of the limits of waste placement proposed, in lateral and vertical expansion PTI application number 02-15841. Therefore, should the PTI application be approved, NEC would immediately be out of compliance with the permit. Therefore, modification and operation of the sanitary landfill facility will violate ORC Chapter 3734. and the Facility is not capable of being operated in compliance with OAC Chapter 3745-27 or with the terms and conditions of the permit.
20. ORC Section 3734.44(D) states “no permit or license shall be issued or renewed by the director of environmental protection or a board of health unless the director or the board of health finds that the applicant has a history of compliance with environmental laws in this state and other jurisdictions and is presently in substantial compliance with or on a legally enforceable schedule that will result in compliance with, environmental laws in this state and other jurisdictions.”
21. As a result of violations pertaining to unauthorized waste placement and failure to commence closure activities, among many other violations, on October 3, 2005, Ohio EPA referred NEC to the Attorney General’s Office (“AGO”) to address violations of ORC Chapters 3734. and 3704. and the regulations adopted thereunder.
22. As evidenced by the violations noted above, as well as other violations, and the October 3, 2005, enforcement referral to the AGO, NEC is not in substantial compliance with Ohio’s environmental laws.
23. Because NEC is not in substantial compliance with Ohio’s environmental laws, because modification and operation of the Facility will violate ORC Chapter 3734., because the Facility will not be capable of being constructed, operated, closed, and maintained during the post-closure care period in accordance with OAC Chapter 3745-27 and with the terms and conditions of the permit, and because NEC does not meet the requirements of ORC Sections 3734.42 to 3734.44 and rules adopted thereunder, the director cannot issue a sanitary landfill facility permit to install to

V. ORDERS

1. PTI Application Number 02-15841, submitted by NEC, received October 12, 2001, is hereby denied.
2. Nothing in these Findings and Orders shall be construed to authorize any waiver from the requirements of any applicable state solid waste laws or regulations. Furthermore, these Findings and Orders shall not be interpreted to release NEC from responsibility under ORC Chapters 3704., 3734., or 6111.; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

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 NEC and/or the 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 NEC for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require NEC to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of NEC to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of NEC. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations at the Facility.

IT IS SO ORDERED

Chris Korleski, Director
Ohio Environmental Protection Agency