



State of Ohio Environmental Protection Agency

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Mr. Joseph Balog, President
Norton Environmental Company
6055 Rockside Woods Blvd., Suite 100
Independence, Ohio 44131

**Re: Mt. Eaton Sanitary Landfill, Wayne County
Revised Closure/Post-Closure Plan and Exemption**

Dear Mr. Balog:

On June 13, 2008, the Ohio Environmental Protection Agency (Ohio EPA), Northeast District Office (NEDO), Division of Solid and Infectious Waste Management (DSIWM) received a Final Closure/Post-Closure Plan for the Mt. Eaton Sanitary Landfill, prepared by URS Corporation on behalf of Norton Environmental Company (Norton) for the Mt. Eaton Sanitary Landfill (Facility) located in Wayne County. In addition to the Final Closure/Post-Closure Care Plan, a variance was requested pursuant to Ohio Administrative Code (OAC) Rule 3745-27-03(C). The purported variance request was made in order to allow proposed final waste grades and top of final cap system grades to remain above permitted elevations established in permit to install (PTI) No. 02-6450, approved on June 7, 1995.

Pursuant to Ohio's solid waste regulations, extension of the vertical boundary of waste placement is a "vertical expansion" as that term is defined in OAC Rule 3745-27-01(V)(1) and constitutes a "modification" of the facility as that term is defined in OAC Rule 3745-27-02(C). Furthermore, Ohio's statute and solid waste regulations require that a permit to install be obtained prior to modifying a solid waste facility. As you know, Norton did not obtain a permit to install prior to vertically expanding the Facility.

Norton's request, while styled as a request for a variance, is not a variance request but rather a request for an exemption. Norton is, in effect, requesting an exemption from the requirement to obtain a permit to install prior to modifying the Facility by vertically expanding the vertical boundary of waste placement beyond the limits currently authorized in PTI No. 02-6450, approved June 7, 1995. Norton's request, pursuant to OAC Rule 3745-27-03(C), to allow final waste grades and top of final cap system grades above previously permitted elevations and from the provisions of OAC Rules 3745-27-06(B)(4)(d) and (f), which specify information to be submitted as part of a permit to install application, is an exemption request erroneously styled as a request for a variance.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

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Ohio Revised Code (ORC) Section 3734.02(G) and OAC Rule 3745-27-03(B) provide that the Director of Ohio EPA may, by order, exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with any other requirement of ORC Chapter 3734.

PTI No. 02-6450, approved June 7, 1995, already has incorporated within it a Final Closure Plan which specifies the schedule and description of the steps necessary to close the Facility and a Post-Closure Plan which includes the various post-closure activities detailed in OAC Rule 3745-27-14. Additionally, PTI No. 02-6450 contains the plan drawings that establish the permitted limits of waste placement and final grades of the Facility. When Norton reached the Facility's permitted limits of waste placement over five years ago, it triggered mandatory closure of the Facility in accordance with the approved Final Closure Plan, Post-Closure Plan, and plan drawings which constitute a part of PTI No. 02-6450. As held by the Ninth District Court of Appeals in *State of Ohio ex rel. Petro v. Norton Environmental Co.*, "OAC 3745-27-11(C) requires [t]he owner or operator of a sanitary landfill facility to begin final closure activities in accordance with the final closure/post-closure plan *** no later than seven days after approved limits of solid waste placement have been reached." The Ninth District Court of Appeals further held that Norton is "obligated to comply with the permit under which it was operating – PTI 02-6450." No further Final Closure/Post-Closure Care Plan, or approval thereof, is necessary.

Therefore, I decline to consider the Final Closure/Post-Closure Care Plan submitted by Norton for the Mt. Eaton Sanitary Landfill on June 13, 2008. Further, I cannot determine that granting an exemption, which is necessary to allow the overfilled waste to remain in place without obtaining the required permit to install to vertically expand the Facility, is unlikely to adversely affect the public health or safety or the environment. Therefore, I decline to grant such an exemption.

I am returning to you the \$15.00 check submitted with your purported variance request, which as set out above is instead a request for an exemption.

The Wayne County Court of Common Pleas found, and the Ninth District Court of Appeals affirmed, that Norton exceeded the permitted limits of waste placement at the Facility as established in PTI No. 02-6450, triggering mandatory closure, and failed to close. Norton is obligated to close the Facility in accordance with PTI No. 02-6450. I fully expect Norton to immediately commence and complete closure and post-closure care of the Facility in accordance with PTI No. 02-6450 and all applicable requirements in order to return to compliance with Ohio's solid waste laws and regulations.

I trust that this letter clearly communicates my expectations regarding proper management of the Mt. Eaton Sanitary Landfill.

Sincerely,

Mr. Joseph Balog
Norton Environmental Company
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Chris Korleski
Director, Ohio EPA

cc: Steven Viny, Norton Environmental Co.
John Cayton, AGO
Ken Eng, Wayne County Health Department
Scott Hester, CO, DSIWM
Kurt Princic, NEDO, DSIWM

Enclosure: Check No. 1717