

Date Issued: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Suburban Landfill, Inc.	:	<u>Director's Final Findings</u>
3415 Township Road 447	:	<u>and Orders</u>
Glenford, Ohio 43739	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Suburban Landfill, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Facility owned by the Respondent (as hereinafter defined) shall in any way alter Respondent'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 has determined the following findings:

1. Respondent is the owner, operator, and license holder of the Suburban Landfill, Inc. Facility ("Facility"). The Facility is located at 3415 Township Road 447, Glenford, Perry County, Ohio.
2. The Facility is a "sanitary landfill facility" as defined under Ohio Administrative Code ("OAC") Rule 3745-27-01(C)(4) and is authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E), OAC Rule 3745-27-01(B)(43), and OAC Rule 3745-50-10(A)(96).
3. Respondent is a "person" as defined in ORC Section 3734.01(G), OAC Rule 3745-27-01(B)(27), and OAC Rule 3745-50-10(A)(81).
4. In correspondence dated June 16, 1997, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-19(E)(24) for accepting hazardous waste for disposal at the Facility. This hazardous waste was received from the Ohio Plastics Company located in Frazeytsburg, Ohio. To date, this hazardous waste has not been removed.
5. In correspondence dated September 8, 1997, Ohio EPA notified Respondent of the violation of OAC Rule 3745-27-19(E)(24) for accepting hazardous waste for disposal at the Facility. This hazardous waste was received from Allied Signal Inc. located in Ironton, Ohio. To date, this hazardous waste has not been removed.
6. In correspondence dated January 27, 1999, the Perry County Health Department, and in correspondence dated January 29, 1999, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-19:
 - a. Respondent violated OAC Rule 3745-27-19(E)(1) for failing to prepare for inclement weather;
 - b. Respondent violated OAC Rule 3745-27-19(F) for failing to apply daily cover; and
 - c. Respondent violated OAC Rule 3745-27-19(J)(4) for failing to prevent ponding water.
7. In correspondence dated June 8, 1999, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-19(E)(30) for disposing of scrap tire chips at a sanitary landfill.

8. In correspondence dated April 13, 2000, the Perry County Health Department, and in correspondence dated April 12, 2000, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-19(K)(1) for not controlling leachate outbreaks. At the time of inspection, three leachate outbreaks were observed at the Facility.
9. In correspondence dated February 5, 2001, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-19(K) for not repairing leachate outbreaks and not properly managing and controlling the leachate outbreaks.
10. In correspondence dated February 21, 2001, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-19(C) for not complying with the authorizing documents for the Facility. Respondent's installation of Leachate Percolation Sump #23 was determined to be deficient. This violation was discovered during a review of the document entitled "*Leachate Recirculation Sump #23 Location and Volume Suburban South Recycling and Disposal Facility*" that Respondent submitted to Ohio EPA on January 12, 2001.
11. In correspondence dated June 15, 2001, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-19(F) for not applying daily cover.
12. On May 1, 2002, Ohio EPA, Division of Hazardous Waste Management conducted a compliance evaluation inspection of the former Rickenbacker Air National Guard Base in Columbus, Ohio. During this inspection Ohio EPA determined that in June 2000, approximately 830 tons of hazardous waste contaminated soil was sent to the Facility for treatment at the Facility's biotreatment unit. Following treatment, the soil was used as daily cover at the Facility.
13. Analytical tests performed on the soil prior to shipment to the Facility determined that the soil exceeded hazardous waste concentrations for trichloroethene ("TCE"). Respondent is not a permitted hazardous waste treatment, storage, or disposal facility pursuant to ORC Chapter 3734.
14. On August 9, 2002, Respondent was issued generator identification number OHR 000 110 221 by Ohio EPA. At the present time, this generator identification number is for Ohio EPA's internal tracking purposes only, and Respondent does not generate "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03.
15. In correspondence dated July 29, 2002, Ohio EPA notified Respondent of its violations of the following regulations:

- a. Violated OAC Rule 3745-27-19(A) for not complying with the requirements and operational criteria in this rule;
- b. Violated OAC Rule 3745-27-19(B) for not conducting operations at the Facility in strict compliance with the terms and conditions of the solid waste disposal license;
- c. Violated OAC Rule 3745-27-19(C) for not conducting all operations at the Facility in strict compliance with the applicable authorizing documents;
- d. Violated OAC Rule 3745-27-19(E)(24) for accepting hazardous waste for disposal;
- e. Established and operated a hazardous waste treatment and disposal facility without a permit, in violation of ORC § 3734.02(E) and (F);
- f. Failed to operate the Facility in a manner which minimizes the possibility of an unplanned release of hazardous waste, in violation of OAC rule 3745-65-31;
- g. Failed to develop and maintain a closure plan for the biotreatment unit, in violation of OAC rule 3745-66-12;
- h. Failed to obtain an EPA identification number for the treatment and disposal of hazardous waste, in violation of OAC rule 3745-65-11;
- i. Failed to obtain a detailed chemical and physical analysis of a representative sample of waste coming into the Facility, in violation of OAC rule 3745-65-13;
- j. Failed to maintain adequate security, in violation of OAC rule 3745-65-14;
- k. Failed to conduct weekly inspections, in violation of OAC rule 3745-65-15;
- l. Failed to conduct hazardous waste management training, in violation of OAC rule 3745-65-16;

- m. Failed to conduct and document weekly emergency equipment inspections, in violation of OAC rule 3745-65-33;
 - n. Failed to develop and maintain a contingency plan, in violation of OAC rules 3745-65-50 through 3745-65-56;
 - o. Failed to maintain a written operating record, in violation of OAC rule 3745-65-73; and
 - p. Failed to prepare and submit an annual report, in violation of OAC rule 3745-65-75.
16. By letter dated August 19, 2002, Respondent provided responses to Ohio EPA's letter dated July 29, 2002.
 17. On September 16, 2002, Ohio EPA received a Closure Plan from Respondent for the Facility's biotreatment unit.
 18. By letter dated January 23, 2003, Ohio EPA provided Respondent with a written statement of Closure Plan deficiencies.
 19. By letter dated May 5, 2003, the Director of Ohio EPA approved Respondent's Closure Plan.
 20. On August 6, 2003, Ohio EPA received a Closure Certification Report from Respondent for the Facility's biotreatment unit.
 21. On October 1, 2003, Respondent submitted a revised PCB and hazardous waste prevention and detection program ("Hazardous Waste Exclusion Plan") in accordance with OAC Rule 3745-27-19(L). This Hazardous Waste Exclusion Plan was put into the Operating Record on September 25, 2003.
 22. Respondent's ground water monitoring detection program currently includes Acetone and 1,2 Dichloroethene (total).

V. ORDERS

The Respondent shall achieve compliance with ORC Chapter 3734. and the rules promulgated thereunder according to the following compliance schedule:

1. Respondent shall implement the approved Closure Plan in the manner and pursuant

to the time frames set forth in the approved Closure Plan and OAC Rule 3745-66-13.

2. Within thirty (30) days after the effective date of these orders, Respondent shall submit to Ohio EPA a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for closure in accordance with OAC Rules 3745-66-42 through 3745-66-47.
3. Within sixty (60) days after completion of closure, Respondent shall submit a closure certification in accordance with OAC Rules 3745-66-15. Ohio EPA's approval of the closure certification for the area described in Finding No. 15.g. will abate the violations referenced in Finding Nos. 15.e., 15.f., and 15.h. through 15.p.
4. Respondent shall pay to Ohio EPA the amount of \$50,000.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance with hazardous waste and solid waste laws and rules pursuant to ORC Chapter 3734. Payments shall be made as follows:
 - A. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$33,000.00, which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by tendering a certified check for \$33,000.00 to Ohio EPA, Department 631, Columbus, Ohio 43265-0631, made payable to "Treasurer, State of Ohio." A copy of this check shall be submitted to Ann M. Wood, Ohio EPA, Legal.
 - B. Within thirty (30) days after the effective date of these Orders, and in lieu of payment of the remaining \$17,000.00 civil penalty, Respondent shall make payments to supplemental environmental projects, as follows:
 - i. Within thirty (30) days after the effective date of these Orders, Respondent shall deposit \$8,500.00 into the Westland Landfill, Inc./Ohio EPA Financial Assurance Trust Account, Account Number 1083014303, which was established on December 7, 2001 for the purpose of conducting closure/post closure activities at the Westland Landfill, located at R.D. #2, New Concord, Guernsey County, Ohio. Payment shall be made by tendering a certified check for \$8,500.00 to Candada J. Moore, Vice President, Corporate Trust Manager, 7 Easton Oval, Columbus, Ohio 43219, made payable to "Huntington National Bank, attn: Candada J. Moore." Respondent shall submit a copy of all trust deposits to Ann M. Wood, Ohio EPA, Legal.

- ii. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$8,500.00 which will be deposited into the Cozart Landfill cleanup fund (fund No. 4P5) and used explicitly for the purposes of closure and post-closure care (and related activities) of the Cozart Landfill, located on Township Road 235 in Section 3 of Carthage Township, Athens County, Ohio. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$8,500.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent, the Facility, and a designation for deposit of funds to the Cozart Landfill cleanup fund, fund No. 4P5. A copy of this check shall be submitted in accordance with Section X. of these Orders and a copy shall also be submitted to Ann M. Wood, Ohio EPA, Legal.
5. If Respondent fails to make the payment set forth in Order no. 4 B.i. of these Orders, within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the remaining balance of \$8,500 in accordance with the procedures set forth in Order no. 4A of these Orders. Payment shall be due no later than thirty- seven (37) days after the effective date of these Orders.
6. If Respondent fails to make the payment set forth in Order no. 4 B.ii. of these Orders, within thirty (30) days of the effective date of these Orders, Respondent shall pay to Ohio EPA the remaining balance of \$8,500.00 in accordance with the procedures set forth in Order no. 4A of these Orders. Payment shall be due no later than thirty-seven (37) days after the effective date of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chiefs of Ohio EPA's Divisions of Solid and Infectious Waste Management and Hazardous Waste Management acknowledge, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The 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 Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-31-04(B).

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 party to these Orders, for any liability arising from, or related to, the operation of Respondent's 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. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, OH 43138

and

Perry County Health Department
Attn: Health Commissioner
P.O. Box 230
121 West Brown Street
New Lexington, OH 43764

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. TOLLING AGREEMENT (ORC § 3745.31)

Respondent agrees that the time period between the effective date of these Orders and payment in full of the civil penalty settlement amount (\$50,000.00) set out in Section V of these Orders will not be included in computing the time periods under the statute of limitations set forth in ORC § 3745.31. Respondent agrees not to assert, plead or raise in any fashion, in any such action hereafter initiated or maintained by the State of Ohio, whether by answer, motion or otherwise, any defense or avoidance based on (a) the running of the statute of limitations during the aforementioned period; or (b) laches or other principles concerning the timeliness of commencing a civil action based upon the failure of the State of Ohio to assert

such claims during the aforementioned period; and the statute of limitations shall be tolled during and for such period.

XV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones

Date

IT IS SO AGREED:

Suburban Landfill, Inc.

Signature

Date

Printed or Typed Name

Title

