

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

BFI of Ohio, Inc.	:	<u>Director's Final Findings</u>
Ottawa County Landfill	:	<u>and Orders</u>
530 North Camp Road	:	
Port Clinton, Ohio 43452	:	

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to BFI Ohio, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 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 (as hereinafter defined) owned by Respondent 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 of Ohio EPA has determined the following findings:

1. The Respondent is the owner, operator, permittee, and license holder for a solid waste disposal facility, known as the Ottawa County Landfill ("Facility") located at 530 North

Camp Road, Port Clinton, Ottawa 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) and OAC Rule 3745-27-01(B)(43).
3. On July 15, 1974, Ohio EPA issued a permit approval initially authorizing construction of the Facility.
4. On February, 28, 1992, Ohio EPA issued a Permit-to-Install ("1992 PTI") No. 03-3822 authorizing the vertical and horizontal expansion of the Facility. The 1992 PTI included, among other things, the establishment of certain lateral and vertical waste disposal limits, as well as certain construction requirements.
5. Beginning in 1979 and continuing annually thereafter, Respondent has applied for and received annual operating licenses issued in accordance with ORC § 3734.05 and OAC Chapter 3745-37. Respondent currently holds a valid 2003 annual operating license.
6. ORC § 3734.11(A) states, "[n]o person shall violate any section of this chapter, any rule adopted under it, or any order issued under section 3734.13 of the Revised Code."
7. ORC § 3734.11(B) states, "[n]o person who holds a permit or license issued under this chapter shall violate any of the terms and conditions of the permit or license."
8. OAC Rule 3745-27-19(C) states, in pertinent part, "[t]he owner or operator shall conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing document(s), including permit(s) to install . . . ."

### **Violations of 1992 PTI**

9. Respondent has failed to maintain strict compliance with its 1992 PTI. In particular, Ohio EPA has determined Respondent violated the terms and conditions of its 1992 PTI and therefore ORC Sections 3734.11(A), 3734.11(B), and OAC Rule 3745-27-19(C) by:
  - a. exceeding its authorized vertical and horizontal limits of waste placement in several areas of the Facility. Ohio EPA notified Respondent of this violation in correspondence dated July 3, 2002, September 19, 2002, and February 26, 2003. In response to the July 3, 2002, and September 19, 2002 notices of

violation (“NOVs”), Respondent provided an email correspondence dated November 22, 2002 indicating, inter alia, that all overfills identified by Ohio EPA had been removed. No technical data or other evidence was submitted with the email to document the statement made by Respondent that all overfills had been removed;

- b. failing to place fill material in accordance with its phase requirements as prescribed by the 1992 PTI. Ohio EPA notified Respondent of this violation in correspondence dated July 18, 2001, July 3, 2002, and September 19, 2002;
  - c. failing to provide Ohio EPA with permeability testing results within 7 days prior to use of soil material as required by Condition 11. g. of the 1992 PTI. Ohio EPA notified Respondent of this violation in correspondence dated January 31, 2003;
  - d. failing to provide Ohio EPA with moisture content and density testing results of recompacted soils as required by Condition 11. i. of the 1992 PTI. Ohio EPA notified Respondent of this violation in correspondence dated January 31, 2003;
  - e. failing to provide Ohio EPA a summary of each month’s daily waste receipt by the 15<sup>th</sup> day of the following month as required by Condition 12 of the 1992 PTI. Ohio EPA notified Respondent of this violation in correspondence dated July 29, 1999, and December 7, 2000;
  - f. failing to cap areas of the landfill that had reached approved final elevations of solid waste placement. Ohio EPA notified Respondent of this violation in correspondence dated September 19, 2002, and April 8, 2003.
10. OAC Rule 3745-27-19(E)(18) states, “ The owner or operator shall not begin filling in a new phase, without completing the previous phase, except to the extent necessary for the proper operation of the sanitary landfill facility.”

As a result of Respondent’s failure to comply with its 1992 PTI, ORC § 3734.11(A) ORC § 3734.11(B), and OAC Rule 3745-27-19(C) Respondent also violated OAC Rule 3745-27-19(E)(18) due to Respondent’s failure to complete filling in one phase before filling in a new phase. In particular, Ohio EPA has determined that since 1993: (a) Respondent has been filling in multiple phases, (b) that phases 5, 6, 7 and 8 were filled while airspace was remaining in previous phases, and (c) phases 2 and 4A have not been completed and have authorized airspace remaining. Ohio EPA notified

Respondent of these violations in correspondence dated July 18, 2001, July 3, 2002 and September 19, 2002.

11. OAC Rule 3745-27-19(H) states, “[t]he owner or operator shall construct the final cap system when a phase has reached approved final elevations of solid waste placement....”

As a result of Respondent’s failure to comply with its 1992 PTI, OAC Rule 3745-27-19(C), ORC § 3734.11(A) and ORC § 3734.11(B), Respondent also violated OAC Rule 3745-27-19(H) due to Respondent’s failure to construct the final cap system when phases of the Facility had reached approved final elevations of solid waste placement. Ohio EPA notified Respondent of this violation in correspondence dated September 19, 2002, and April 8, 2003.

#### **Violations of 1999 Directors Final Findings and Orders**

12. Respondent has violated Condition No. 7 of the April 8, 1999 Director’s Final Findings and Orders (“1999 DFF&Os”) authorizing Respondent to use alternate daily cover material from the LTV Steel Company (“LTV material”) by failing to manage all water coming in contact with the LTV material as leachate. Ohio EPA notified Respondent of this violation on June 25, 1999. Respondent’s failure to comply with Condition No. 7 of the 1999 DFF&Os further constitutes a violation of OAC Rule 3745-27-19(C).

#### **Violations of Operational Criteria**

13. OAC Rule 3745-27-19(F) states, in pertinent part, “[d]aily cover shall be applied to all exposed solid waste by the end of the working day....”

Respondent violated OAC Rule 3745-27-19(F) by failing to apply a minimum of six inches of daily cover to all exposed solid waste at the end of each working day. Ohio EPA observed these violations during inspections conducted on July 8, 1998, June 16, 1999, February 25, 2002 and February 4, 2003 and notified Respondent of these violations in correspondence dated July 8, 1998, June 25, 1999, March 7, 2002 and February 26, 2003.

14. OAC Rules 3745-27-19(K)(1) (a)-(c) states, in pertinent part “(1) If a leachate outbreak(s) occurs at the sanitary landfill facility, the owner or operator shall repair the outbreak(s) and do the following: (a) Contain and properly manage the leachate at the sanitary landfill facility. (b) If necessary, collect and dispose of the leachate in accordance with paragraphs (K)(5) and (K)(6) of this rule. (c) Take action to minimize,

control, or eliminate the conditions which contribute to the production of leachate.”

Respondent violated OAC Rule 3745-27-19(K) by failing to: 1) contain and properly manage the leachate and 2) take action to minimize, control or eliminate the conditions which contribute to the production of leachate. Ohio EPA observed these violations during inspections conducted on June 16, 1999 and July 2, 1999, and notified Respondent of these violations in correspondence dated June 25, 1999, and July 9, 1999.

15. OAC Rule 3745-27-19(E)(5) states, “[t]he owner or operator shall employ all reasonable measures to collect, properly contain, and dispose of scattered litter, including the use of portable wind screens where necessary and frequent policing of the area.”

Respondent violated OAC Rule 3745-27-19(E)(5) by failing to collect, contain and dispose of scattered litter. Ohio EPA observed these violations during inspections conducted on March 15, 2000, March 26, 2001 and February 25, 2002 and notified Respondent of these violations in correspondence dated April 5, 2000, April 3, 2001 and March 7, 2002.

16. OAC Rule 3745-27-19(E)(22) states, in pertinent part “[e]xcept as provided in paragraph (E)(20) of this rule, the owner or operator shall ensure that all solid waste admitted to the sanitary landfill facility is deposited at the working face....”

Respondent violated OAC Rule 3745-27-19(E)(22) by failing to deposit solid waste at the working face. Ohio EPA observed these violations during inspections conducted on May 19, 1998, June 18, 1998 and July 14, 1999 and notified Respondent of these violations in correspondence dated June 16, 1998, July 8, 1998 and July 29, 1999.

17. OAC Rule 3745-27-19(M)(1) states, in pertinent part “ [t]he owner or operator of a sanitary landfill facility shall submit an ‘annual operational report’ to the appropriate Ohio EPA district office and approved health department not later than the first day of April of each year. The ‘annual operational report’ shall include, at minimum, a topographic map of the unit(s) of the sanitary landfill facility identifying the areal extent of each phase of construction and a comparison of the actual vertical and horizontal limits of emplaced waste to the vertical and horizontal limits of waste placement authorized in the applicable authorizing document(s), including an approved permit(s) to install, plan approval, or operational report...”

Respondent violated OAC Rule 3745-27-19(M)(1) by failing to submit in its annual report: 1) the areal extent of each phase of construction and 2) a comparison of the actual vertical and horizontal limits of emplaced waste to those limits established in Respondent's authorizing documents. Ohio EPA observed these violations during its periodic review of Respondent's annual reports and notified Respondent of these violations in correspondence dated July 18, 2001 and April 10, 2002.

18. OAC Rule 3745-27-19(E)(24), as effective on June 1, 1994, states in pertinent part "[t]he owner or operator shall not accept for disposal, or dispose of materials that are defined as hazardous wastes pursuant to rule 3745-51-03 of the Administrative Code...."

Respondent violated OAC Rule 3745-27-19(E)(24) when it accepted and disposed of a load of hazardous waste on May 18, 2001. Ohio EPA notified Respondent of this violation in correspondence dated July 3, 2001. On February 21, 2002, Ohio EPA sent Respondent a warning letter with regard to this violation.

### **Facility Operating Record**

19. OAC Rule 3745-27-09(B)(1)(a), as effective June 1, 1994, states in pertinent part "[t]he owner or operator of a sanitary landfill facility receiving solid waste on June 1, 1994, shall establish the operating record by placing in the operating record the documents specified in paragraph (J)(1) of this rule, in accordance with the schedule contained in paragraph (K) of this rule...."

Respondent violated OAC Rule 3745-27-09(B)(1)(a) by failing to place the explosive gas monitoring plan meeting the requirements of OAC Rule 3745-27-12 into the operating record by September 1, 1994.

On March 22, 1999, Respondent submitted its revised explosive gas monitoring plan to Ohio EPA in belated fulfillment of OAC Rule 3745-27-09(B)(1)(a).

20. OAC Rule 3745-27-09(G) states, in part "the owner or operator shall update the operating record, at least annually, no later than April 1 of each year...."

Respondent violated OAC Rule 3745-27-09(G) by failing to annually update the operating record by April 1 of the affected year. Ohio EPA observed this violation during a May 19, 1998, inspection and notified Respondent of this violation in correspondence dated June 16, 1998.

On May 22, 1998, Respondent submitted its annual update to the operating record in belated fulfillment of OAC Rule 3745-27-09(G).

### **May 2003, Facility Fire**

21. OAC Rule 3745-27-08(C)(11) states, “[e]xplosive gas control structures shall be designed so that explosive gas cannot travel laterally from the sanitary landfill facility or accumulate in occupied structures. Explosive gas control/extraction systems shall be designed in such a manner as to prevent fires within the limits of solid waste placement. Construction of the explosive gas control/extraction systems shall not compromise the integrity of the cap system, the leachate management system, or the recompacted soil liner.”
22. OAC Rule 3745-27-19(E)(26) states that, “[t]he owner or operator shall maintain the integrity of the engineered components of the sanitary landfill facility and repair any damage to or failure of the components. ‘Engineered components’ includes the components described in rule 3745-27-08 of the Administrative Code and components of the monitoring system(s) installed in accordance with rule 3745-27-10 of the Administrative Code.”
23. On May 29, 2003 Ohio EPA conducted an inspection of the Facility in response to a notification of a fire occurring within the limits of waste placement at the Facility. The inspection revealed that smoke was emanating from the northwest manhole as well as gas extraction well # 56 and that the possible cause of the fire was heat in the gas extraction system in combination with oxygen drawn through dry cover material above. Subsequently in correspondence dated June 10, 2003, Ohio EPA notified Respondent that its failure to maintain the integrity of engineered components is a violation of OAC Rule 3745-27-19(E)(26) and failure to design explosive gas control/extraction systems to prevent fires within the limits of waste placement is a violation of OAC Rule 3745-27-08(C)(11). As of August 18, 2003, the manhole at the northwest corner of the Facility where the fire was located had dropped to a temperature of 89E F indicating that a fire was no longer burning in the area.

### **Groundwater Monitoring Program**

24. OAC Rule 3745-27-10(B)(1)(b) states, “[t]he ground water monitoring system, for detection monitoring, assessment monitoring, or corrective measures, shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from both the uppermost aquifer system and any significant zones of saturation that exist above the uppermost aquifer system that do the following:

(b) [r]epresent the quality of the ground water passing directly downgradient of the limits of solid waste placement.

Respondent violated OAC Rule 3745-27-10(B)(1)(b) by failing to have a groundwater monitoring network that consists of a sufficient number of wells installed at appropriate locations to adequately represent the quality of the groundwater passing directly downgradient of the limits of solid waste placement. Ohio EPA notified Respondent of this violation in correspondence dated May, 13, 1998.

25. OAC Rule 3745-27-10(C)(1)states “[t]he ground water monitoring program shall include consistent sampling and analysis procedures and statistical methods that are protective of human health and the environment and that are designed to ensure monitoring results that provide an accurate representation of ground water quality....”

Respondent violated OAC Rule 3745-27-10(C)(1) by failing to analyze groundwater samples from the June 2001, semi-annual sampling event in a manner that used appropriate sampling and analysis procedures that are protective of human health and the environment. Ohio EPA notified Respondent of this violation in correspondence dated October 15, 2001.

26. OAC Rule 3745-27-10(C)(1)(a) states, in pertinent part, that the ground water detection monitoring plan shall include “[a] written sampling and analysis plan which documents the sampling and analysis procedures employed in the ‘ground water detection monitoring program,’ ....”

Respondent violated OAC Rule 3745-27-10(C)(1)(a) by failing to follow the sampling and analysis procedures outlined in the groundwater detection monitoring sampling and analysis plan. Ohio EPA notified Respondent of this violation in correspondence dated July 1, 1998.

27. OAC Rule 3745-27-10(C)(10) states in part “[a]ll ground water elevation, sample analysis and statistical analysis results generated in accordance with paragraphs (B),(C), (D), (E) and (F) of this rule shall be submitted to the director or his authorized representative not later than seventy-five days after sampling the well.”

Respondent violated OAC Rule 3745-27-10(C)(10) by failing to submit groundwater sampling results to Ohio EPA within 75 days after the June 15-16, 1998, sampling event. Ohio EPA notified Respondent of this violation in correspondence dated November 17, 1998.

28. OAC Rule 3745-27-10(D)(5)(a)(ii)(a) states in part that the owner or operator shall collect “[d]uring the initial one hundred and eighty days after implementing the ground water detection monitoring program (the first semiannual sampling event), a minimum of four independent samples from each monitoring well screened in the uppermost aquifer system (background and downgradient) and analyzed for the parameters specified in paragraph (D)(5)(a)(i) of this rule.”

Respondent violated OAC Rule 3745-27-10(D)(5)(a)(ii) by failing to collect the appropriate number of independent samples to establish a background water quality data set for monitoring well (“MW”) #32, which was added to the groundwater monitoring network on July 23, 1998. Ohio EPA notified Respondent of this violation in correspondence dated March 15, 2000.

29. OAC Rule 3745-27-10(D)(5)(a)(iii) states in part that the owner or operator shall monitor wells “[b]eginning with receiving the results from the second semiannual monitoring event and semiannually thereafter, by statistically analyzing the results from wells screened in the uppermost aquifer system for the parameters specified in paragraph (D)(5)(a)(i) of this rule.”

Respondent violated OAC Rule 3745-27-10(D)(5)(a)(iii) by failing to perform semi-annual statistical evaluations of the ground water data from MW #32. Ohio EPA notified Respondent of this violation in correspondence dated March 13, 2001 and June 22, 2001.

30. OAC Rule 3745-27-10(E)(2) states, “[w]ithin one hundred and five days of notifying the director of a significant change in accordance with paragraph (D)(7)(b) of this rule, the owner or operator shall submit to the director, and to the operating record in accordance with rule 3745-27-09 of the Administrative Code, a ‘ground water quality assessment plan’ for implementing a ‘ground water quality assessment monitoring program’ at the sanitary landfill facility.”

Respondent violated OAC Rule 3745-27-10(E)(2) by failing to submit the ground water quality assessment plan by June 2, 1999, as required due to the statistically significant changes in groundwater noted by Respondent and reported to Ohio EPA on February 17, 1999. Ohio EPA notified Respondent of this violation in correspondence dated October 19, 1999.

31. OAC Rule 3745-27-10(E)(3)(c)(i) as effective June 1, 1994, states in pertinent part “[t]he plan to be submitted in accordance with paragraph (E)(2) of this rule shall include, at a minimum, detailed descriptions of the investigatory approach to be

followed during the assessment... including but not limited to the proposed number, location, depth, installation method, and construction of assessment monitoring wells....”

Respondent violated OAC Rule 3745-27-10(E)(3)(c)(i) by failing to revise the groundwater quality assessment plan to document the inclusion of MW #9, MW #27, and MW #29 in the ground water quality assessment program as required due to the statistically significant increases noted at the above wells during the June 1999 semi-annual sampling event. Ohio EPA notified Respondent of this violation in correspondence dated March 15, 2000.

32. OAC Rule 3745-27-10(E)(6) as effective June 1, 1994, states “The owner or operator shall make a first determination according to paragraph (E)(5) of this rule within the time frame specified in the submitted ‘ground water quality assessment plan.’ The owner or operator shall submit to the director, not later than fifteen days after making a first determination, a written ‘ground water quality assessment report’ containing an assessment of the ground water quality including all data generated as part of implementation of the ‘ground water quality assessment plan’.”

Respondent violated OAC Rule 3745-27-10(E)(6) by failing to submit the first determination of rate, extent, and concentration in accordance with the requirements of OAC Rule 3745-27-10(E)(5) by December 2, 1999, the time frame specified in the ground water quality assessment plan for the Facility. Ohio EPA notified Respondent of this violation in correspondence dated August 28, 2000.

### **Construction Certification Reports**

33. On October 31, 2002, Respondent submitted a construction certification report for placement of final cover on the north slope of Phase 2 of the Facility. Ohio EPA concurred with this construction certification report on January 9, 2003.
34. On January 3, 2003, Respondent submitted a construction certification report for placement of interim final cover on the east slope of Phase 4A of the Facility. Ohio EPA concurred with this construction certification report on May 13, 2003.
35. On January 3, 2003, Respondent submitted a construction certification report for placement of final cover on the northeast corner of the north slope of Phase 4A of the Facility. Ohio EPA concurred with this construction certification report on May 13, 2003.

36. On February 26, 2003, Respondent submitted a construction certification report for placement of interim final cover on the south slope of Phase 4A. Ohio EPA ~~concurred~~ with this construction certification report on May 13, 2003.
37. On February 26, 2003, Respondent submitted a construction certification report for placement of interim final cover on the south slope of Phase 2 of the Facility. Ohio EPA concurred with this construction certification report on May 13, 2003.
38. On October 24, 2003, Respondent submitted a construction certification report for the placement of final cover on the south slope of Phase 2, the north slope of Phase 4A (extending from the western limit of Phase 4A on the north slope progressing east) and south slope of Phase 4A of the Facility. To date, this construction certification report is being reviewed by Ohio EPA for concurrence.

#### **V. ORDERS**

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

1. If a Notice of Deficiency ("NOD") is issued by Ohio EPA, Northwest District Office ("NWDO") regarding the construction certification report submitted by Respondent for Phase 2 and the north and south slopes of Phase 4A, Respondent shall, within thirty (30) days of the date of such NOD, submit to Ohio EPA, NWDO for concurrence a revised construction certification report that addresses all deficiencies noted in the NOD.
2. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall attain compliance with the lateral and vertical limits of solid waste placement as specified in the 1992 PTI by removing and lawfully disposing of any overfill or Respondent shall obtain authorization from the Director to allow waste to remain in place.
3. Immediately upon the effective date of these Orders except as otherwise noted in Orders No. 1 and 2 above, Respondent shall continue to comply with all terms and conditions as specified in the 1992 PTI and any subsequent authorizations from the Director.
4. Within ninety (90) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for concurrence an acceptable landfill fire assessment plan

("Assessment Plan") pursuant to OAC Rule 3745-27-19(E)(26) to assess all possible damage to all engineered components of the landfill caused by the subsurface landfill fire(s) at the Facility. If a NOD is issued by Ohio EPA, NWDO regarding the Assessment Plan, Respondent shall, within thirty (30) days of the date of such NOD, submit to Ohio EPA, NWDO for concurrence a revised Assessment Plan that addresses all deficiencies noted in the NOD. The Assessment Plan shall include, at a minimum, criteria that must be achieved to determine that the fire has been extinguished and a schedule of assessment activities to be completed to determine the impact on the integrity of the engineered components of the landfill.

5. Within one hundred and eighty (180) days after Ohio EPA, NWDO concurrence with the Assessment Plan, or other date approved by Ohio EPA, NWDO, Respondent shall complete the assessment of the integrity of the Facility's engineered components in accordance with the Assessment Plan required by order No. 4. Within one hundred and eighty one (181) days after Ohio EPA, NWDO concurrence with the Assessment Plan, or other date approved by Ohio EPA, NWDO, Respondent shall submit written verification to Ohio EPA, NWDO that Respondent has completed the tasks in the manner and in the timeframes set forth in the Assessment Plan.
6. Within two hundred and ten (210) days of Ohio EPA, NWDO concurrence with the Assessment Plan, or other date approved by Ohio EPA, NWDO, Respondent shall submit to Ohio EPA, NWDO for concurrence an acceptable landfill fire remediation plan ("Remediation Plan") pursuant to OAC Rule 3745-27-19(E)(26) describing how and when any problems related to the integrity of the engineered components of the landfill will be repaired. If a NOD is issued by Ohio EPA, NWDO regarding the Remediation Plan submitted by Respondent, Respondent shall, within thirty (30) days of the date of such NOD, submit to Ohio EPA, NWDO for concurrence a revised Remediation Plan that addresses all deficiencies noted in the NOD. Respondent shall comply with the Remediation Plan, and the schedules set forth therein, immediately upon Ohio EPA, NWDO concurrence.
7. Immediately upon the effective date of these Orders Respondent shall submit with each subsequent Annual Operational Report required by OAC Rule 3745-27-19(M) an isopach map that compares current waste placement at the Facility to the approved limits of waste placement.
8. Respondent shall pay to Ohio EPA the amount of \$46,120.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 3734. The civil penalty settlement shall be payable as follows:

- a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$ 36,120.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734 and which will be deposited into the environmental protection remediation fund established pursuant to ORC § 3734.281. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$36,120.00. 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 and the Facility and a copy of the check to shall be sent to Ann M. Wood, Ohio EPA Office of Legal Services.
- b. Within thirty (30) days after the effective date of these Orders, and in lieu of payment of the remaining \$10,000.00 civil penalty, Respondent shall make a payment to a supplemental environmental project by depositing \$10,000.00 into the Countyline Landfill Trust aka John B. Stahl, Executor of the estate of Henry G. Stahl, deceased, trust/Ohio EPA Financial Assurance Trust Account, Account Number 8100, which was established on December 1, 1995 for the purpose of conducting post-closure care activities at the Countyline Landfill, located at 1680 Co. Rd. #157, Fremont, OH 43420. Payment shall be made by tendering a certified check for \$10,000.00 to Barry F. Luse, Trustee, Croghan Colonial Bank, 323 Croghan Street, Fremont, OH 43420, made payable to "Croghan Colonial Bank FBO Henry G. Stahl." Respondent shall submit a copy of all trust deposits to Ann M. Wood, Ohio EPA, Legal."
- c. Should Respondent fail to make the payment to the Countyline Landfill Trust within the time frame established in 1. b., above, Respondent shall pay to Ohio EPA the remaining balance of \$10,000.00 of the civil penalty in accordance with the procedures set forth in 8a., above. Payment shall be due no later than seven (7) days after the date the payment to the Countyline Landfill Trust was required to be completed.

## **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 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 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 a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility.

#### **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 required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Solid and Infectious Waste Management  
347 North Dunbridge Road  
Bowling Green, Ohio 45601  
Attn: Unit Supervisor, DSIWM

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 of 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, inclusive of the violations set forth in each of the notice of violation letters listed in Appendix I, which is attached to these Orders and fully incorporated as if fully written 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. 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 [administrative penalty] 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.

**XIV. EFFECTIVE DATE**

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

**XIII. 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  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**BFI of Ohio, Inc**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

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Title