

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Kilbarger Construction, Inc.	:	<u>Director's Final Findings</u>
dba Athens-Hocking Reclamation Center	:	<u>and Orders</u>
PO Box 946	:	
Logan, Ohio 43138	:	

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Kilbarger Construction, Inc. dba Athens-Hocking Reclamation Center ("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 its successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (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 of Ohio EPA has determined the following findings:

1. The Athens-Hocking Reclamation Center ("Facility") is located at 17970 State Route 33, Nelsonville, Athens County, Ohio.

2. Respondent is the "owner" and the "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7) and (O)(5), respectively, and is also the license holder for the Facility.
3. The Facility is a "sanitary landfill facility" as that term is defined under OAC Rule 3745-27-01(S)(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(S)(24).
4. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

### **Disposal of Hazardous Waste Violations**

5. In accordance with OAC Rule 3745-27-19(B)(1), "[t]he owner or operator shall conduct all operations at a sanitary landfill facility in strict compliance with the terms and conditions of the solid waste disposal license issued for the facility in accordance with Chapter 3745-37 of the Administrative Code."
6. In accordance with OAC Rule 3745-27-19(B)(2), "[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, a plan approval, an operational report, an approved closure plan, an alteration(s) concurred with in writing by Ohio EPA, or any other document(s) listed in paragraph (I) of rule 3745-27-09 of the Administrative Code."
7. In accordance with OAC Rule 3745-27-19(E)(8)(c), "[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 at a sanitary landfill facility."
8. In accordance with OAC Rule 3745-27-19(L), "...the owner or operator shall implement a written program at the sanitary landfill facility with procedures that are sufficient to detect and prevent the disposal of regulated hazardous wastes as defined in rule 3745-51-03 of the Administrative Code and polychlorinated biphenyls (PCB) wastes as defined in 40 CFR Part 761, July 1, 2003. The owner or operator shall place the 'PCB and hazardous waste prevention and detection program,' inspection records, generator certifications, waste screening information, and notifications required by this rule into the operating record in accordance with rule 3745-27-09 of the Administrative Code.... "
9. On December 13, 2004, the General Electric ("GE") Logan Glass Plant disclosed to Ohio EPA, via facsimile, potential violations regarding the disposal of hazardous waste at a solid waste landfill.

10. On December 14, 2004, Respondent contacted Ohio EPA's Southeast District Office, Division of Solid and Infectious Waste Management ("SEDO-DSIWM") via telephone and stated that GE had informed Respondent that waste from the Logan Glass Plant sent to the Facility for disposal may have contained hazardous constituents.
11. GE collected samples of electrostatic precipitator dust at the Logan Glass Plant in November 2004 and December 2004. Laboratory analysis of samples using the Toxicity Characteristics Leaching Procedure method revealed concentrations of chromium and arsenic above levels characteristic for hazardous waste (D004; D007).
12. On December 22, 2004, Ohio EPA's SEDO, Division of Hazardous Waste Management ("SEDO-DHWM") and SEDO-DSIWM conducted an inspection of the GE Logan Glass Plant and determined that the electrostatic precipitator dust had been sent to the Facility for disposal until November 22, 2004. On February 4, 2005, Ohio EPA, SEDO-DSIWM and -DHWM reviewed the Facility's PCB and hazardous waste prevention and detection program records. In correspondence dated February 15, 2005, Ohio EPA, SEDO-DSIWM notified Respondent of violations of OAC Rule 3745-27-19(B)(1), (B)(2), and (E)(8)(c), and (L) for failure to conduct all operations at a sanitary landfill facility in strict compliance with the terms and conditions of the facility's solid waste disposal license; failure to conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing documents; acceptance of hazardous waste for disposal; and for failure to follow the pre-acceptance waste screening program procedures, respectively.
13. In correspondence to Ohio EPA dated February 16, 2005, Respondent submitted the names of eleven potential hazardous waste generators for which Respondent did not have required disposal request forms on file at the time of Ohio EPA's record review on February 15, 2005.
14. In correspondence to Respondent dated February 17, 2005, the Athens City-County Health Department ("Health Department") reiterated violations of OAC Rule 3745-27-19(B)(1), (B)(2), and (E)(8)(c), and (L) at the Facility.
15. In correspondence to Ohio EPA, SEDO-DHWM dated April 19, 2005, GE Logan Glass Plant reported the results of an internal investigation into the source of contamination. According to the Logan Glass Plant records, GE sent approximately 7,989 pounds of electrostatic precipitator dust to the Facility for disposal between July 5, 2004 and November 22, 2004.

16. On March 25, 2005, Ohio EPA, SEDO-DSIWM received a revised PCB and hazardous waste prevention and detection program document for the Facility.
17. On July 20, 2005, Ohio EPA conducted an inspection of the Facility and in correspondence dated July 26, 2005, notified Respondent that violations of OAC Rule 3745-27-19(B)(1), (B)(2), (E)(8)(c), and (L) remain at the Facility.
18. On July 20, 2005, the Health Department conducted an inspection of the Facility and in correspondence dated July 27, 2005, notified Respondent that violations of OAC Rule 3745-27-19(B)(1), (B)(2), (E)(8)(c), and (L) remain at the Facility.
19. To date, the hazardous waste has not been removed and violations of ORC Chapter 3734. and OAC Rule 3745-27-19 remain.

### **Ground Water Monitoring Violations**

20. In accordance with OAC Rule 3745-27-10(E)(4)(d)<sup>1</sup>, “[w]ithin one hundred and eighty days of implementing the ground water quality assessment program, the owner or operator shall collect additional statistically independent samples (a minimum of four) from any background well that does not have at least four independent analysis results of each leachate or leachate-derived constituents detected in the monitoring well(s), demonstrating a statistically significant increase, to provide sufficient analysis results to statistically compare the downgradient ground water quality assessment program wells to the background wells for that parameter.”
21. In accordance with OAC Rule 3745-27-10(E)(5)<sup>2</sup>, “[t]he owner or operator shall implement the “ground water quality assessment plan” which satisfies the requirements of paragraphs (E)(2), (E)(3) and (E)(4) of this rule and, at a minimum, determine: (a) [t]he rate and extent of migration of the leachate or leachate-derived constituents in the ground water....”
22. In accordance with OAC Rule 3745-27-10(E)(6)<sup>3</sup>, “[t]he 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”

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<sup>1</sup>effective June 1, 1994

<sup>2</sup>effective June 1, 1994

<sup>3</sup>effective June 1, 1994

containing an assessment of the ground water quality including all data generated as part of implementation of the "ground water quality assessment plan."

23. In accordance with OAC Rule 3745-27-10(F)(2)<sup>4</sup>, "[w]ithin one hundred and eighty days of making a first determination in accordance with paragraph (E)(6) of this rule, the owner or operator shall submit a corrective measures plan to the director and into the operating record. The "corrective measures plan" shall evaluate all practicable remediation procedures which are available for remediating any contamination discovered during assessment monitoring program...."
24. In a notice of violation ("NOV") letter dated November 13, 2001, Ohio EPA, SEDO-DSIWM informed Respondent of the following violations: failure to implement a "ground water quality assessment plan" and determine rate and extent of migration of leachate or leachate-derived constituents in ground water is a violation of OAC Rule 3745-27-10(E)(5); failure to submit a written "ground water quality assessment report", which includes all data generated as part of implementation of the "ground water quality assessment plan", is a violation of OAC Rule 3745-27-10(E)(6); and failure to submit a corrective measures plan to the director and into the operating record within 180 days of making a first determination, in accordance with paragraph (E)(6) of this rule, is a violation of OAC Rule 3745-27-10(F)(2).
25. In correspondence dated March 11, 2002, Respondent submitted groundwater monitoring results and statistical analysis for the December 2001 sampling event and proposed revisions to the ground water quality assessment monitoring plan ("GWQAP"), including a schedule for making a first determination and submittal of a written ground water quality assessment report by late September 2002.
26. In correspondence dated May 6, 2002, Ohio EPA, SEDO-DSIWM acknowledged agreement with Respondent's proposed revisions to the GWQAP.
27. In a NOV letter dated July 8, 2002, Ohio EPA, SEDO-DSIWM responded to letters from Respondent dated May 6, 2002 and June 24, 2002, and informed Respondent of continuing violations of OAC Rules 3745-27-10(E)(4)(d), (E)(5), (E)(6), and (F)(2).
28. On September 11, 2002, Ohio EPA, SEDO-DSIWM received results of additional assessment sampling conducted at the Facility, which satisfied the requirements of OAC Rule 3745-27-10(E)(4)(d).

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<sup>4</sup>effective June 1, 1994

29. On October 15, 2002, Ohio EPA, SEDO-DSIWM received a report documenting the first determination of rate and extent, which satisfied the requirements of OAC Rules 3745-27-10(E)(5) and (E)(6).
30. In correspondence dated November 27, 2002, Ohio EPA, SEDO-DSIWM notified Respondent of the Facility's return to compliance with regard to violations of OAC Rules 3745-27-10(E)(4)(d), (E)(5), and (E)(6), and instructed Respondent to submit a corrective measures plan as required by OAC Rule 3745-27-10(F)(2) by April 15, 2003.
31. On April 15, 2003, Ohio EPA, SEDO-DSIWM received the corrective measures plan.
32. In accordance with OAC Rule 3745-27-10(A)(2)(a)<sup>5</sup>, "[the] owner or operator of an operating sanitary landfill facility subject to 3745-27-19 of the Administrative Code, shall make any applicable revisions to the facility ground water monitoring program, submit revisions to the operating record, and implement any measures required by amendments to this rule within two hundred seventy days of the effective date of the rule."
33. In accordance with OAC Rule 3745-27-09(D)(2)<sup>6</sup>, "[t]he owner or operator may revise documents previously placed in the operating record by placing the revised document, or the revised portion of the document, into the operating record. The owner or operator shall clearly indicate in the revised document the changes made to the document. Whenever a document is revised, the owner or operator shall promptly submit to Ohio EPA and the approved health department a copy of the revised document, or revised portion of the document, and a revised operating record index by regular mail. This submission is in addition to annual submission by certified mail or any other form of mail accompanied by a receipt of the operating record index."
34. On August 4, 2004, Ohio EPA, SEDO-DSIWM received revisions to the Facility's Ground Water Detection Monitoring Plan ("GWDMP") required by amendments to OAC Rule 3745-27-10, effective August 8, 2003.
35. In correspondence dated October 6, 2004, Ohio EPA notified Respondent of violations of OAC Rule 3745-27-10(A)(2)(a) *[sic]*<sup>7</sup> for failure to timely submit revisions to both the GWDMP and the GWQAP.

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<sup>5</sup>effective August 15, 2003

<sup>6</sup>effective August 15, 2003

<sup>7</sup>Ohio EPA should also have referenced OAC Rule 3745-27-09(D)(2), effective August 15, 2003.

36. In correspondence dated October 7, 2004, Ohio EPA, SEDO-DSIWM again informed Respondent of the failure to timely submit revisions to the GWQAP, in violation of OAC Rule 3745-27-10(A)(2)(a) [sic]<sup>8</sup>.
37. On February 10, 2005, Ohio EPA, SEDO-DSIWM received the Facility's revised GWQAP.

### **Other Operational Violations**

38. In accordance with OAC Rule 3745-27-19(E)(4)<sup>9</sup>, "[t]he owner or operator shall confine unloading of waste materials to the smallest practical area and shall ensure that unloading is supervised by competent operating personnel."
39. On November 6, 2002, the Health Department conducted an inspection of the Facility and observed that the size of the working face was too large, in violation of OAC Rule 3745-27-19(E)(4). In correspondence dated November 8, 2002, the Health Department informed Respondent of this violation.
40. In accordance with OAC Rule 3745-27-19(K)<sup>10</sup>, "if leachate is detected on the surface of the sanitary landfill facility, the owner or operator shall repair the outbreaks and, [c]ontain and properly manage the leachate at the sanitary landfill facility...."
41. On March 20, 2003, the Health Department conducted an inspection of the Facility and observed several leachate outbreaks and that the size of the working face was again too large, in violation of OAC Rules 3745-27-19(K) and (E)(4), respectively. In correspondence dated March 24, 2003, the Health Department informed Respondent of these violations.
42. In accordance with OAC Rule 3745-27-19(E)(9)<sup>11</sup>, "[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."

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<sup>8</sup>and OAC Rule 3745-27-09(D)(2), effective August 15, 2003

<sup>9</sup>effective March 1, 1996; became OAC Rule 3745-27-19(E)(7)(c), effective August 15, 2003

<sup>10</sup>effective March 1, 1996

<sup>11</sup>effective August 15, 2003

43. On November 5, 2003, the Health Department conducted an inspection of the Facility and observed a large amount of scattered and tagging litter located on the outsoles of the previously active cell, in violation of OAC Rule 3745-27-19(E)(9). In correspondence dated November 6, 2003, the Health Department informed Respondent of this violation.
44. In accordance with OAC Rule 3745-27-19(E)(7)(c)<sup>12</sup>, “[t]he owner or operator shall confine unloading of waste materials to the smallest practical area(s). The owner or operator shall ensure that each unloading area is supervised by a person or persons knowledgeable regarding operations at the working face.”
45. In accordance with OAC Rule 3745-27-19(E)(7)(e)<sup>13</sup>, “...[t]he owner or operator shall ensure that all waste admitted to the sanitary landfill facility is deposited at the working face, spread in layers not more than two feet thick, and compacted to the smallest practical volume....”
46. In accordance with OAC Rules 3745-27-19(F)<sup>14</sup>, “[d]aily cover shall be applied to all exposed solid waste by the end of the working day....In no event shall solid waste be exposed for more than twenty-four hours after unloading....”
47. On January 29, 2004, Ohio EPA, SEDO-DSIWM conducted an inspection of the Facility and observed violations of OAC Rule 3745-27-19(B)(2), (E)(7)(c), (E)(7)(e), and (F). In correspondence dated February 4, 2004, Ohio EPA, SEDO-DSIWM informed Respondent of these violations.
48. In accordance with OAC Rule 3745-27-19(G)(1)<sup>15</sup>, “[t]o minimize infiltration, the owner or operator shall apply intermediate cover to all filled areas of a sanitary landfill facility where additional waste is not to be deposited for at least thirty days....”
49. On February 12, 2004, the Health Department conducted an inspection of the Facility and observed inadequate intermediate cover on an area not in use for at least thirty days, in violation of OAC Rule 3745-27-19(G)(1). In correspondence dated February 12, 2004, the Health Department informed Respondent of this violation.

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<sup>12</sup>effective August 15, 2003

<sup>13</sup>effective August 15, 2003

<sup>14</sup>effective August 15, 2003

<sup>15</sup>effective August 15, 2003

50. In correspondence dated February 27, 2004, Ohio EPA, SEDO-DSIWM informed Respondent of violations of the terms and conditions of the Facility Permit-to-Install ("PTI") No. 06-2998, approved July 1, 1993, for failure to pre-qualify three composite soil samples for additional recompacted soil liner borrow materials. Specifically, Respondent failed to submit the results of the earthen materials tests not later than seven days prior to the intended use of the material in construction, in violation of Condition 8A of the PTI and OAC Rule 3745-27-19(B)(2).
51. In accordance with OAC Rule 3745-27-19(M)(5)<sup>16</sup>, "[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...results of analytical testing of an annual grab sample of leachate for the parameters specified in appendix I of rule 3745-27-10 of the Administrative Code and for polychlorinated biphenyls (PCBs)."
52. On March 31, 2004, Ohio EPA, SEDO-DSIWM received the 2003 Annual Report for the Facility. Respondent failed to include results of analytical testing of an annual grab sample of leachate for the parameters specified in appendix I of OAC Rule 3745-27-10 and for polychlorinated biphenyls (PCBs), in violation of OAC Rule 3745-27-19(M)(5). In correspondence dated April 7, 2004, Ohio EPA SEDO-DSIWM informed Respondent of this violation.
53. On May 18, 2005, the Health Department conducted an inspection of the Facility and observed excessive tagging of waste on the north side of cell No. 3, in violation of OAC Rule 3745-27-19(E)(9). In correspondence dated May 25, 2005, the Health Department informed Respondent of this violation.

## **V. ORDERS**

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

1. Within forty-five (45) days after the effective date of these Orders, Respondent shall evaluate and revise, as necessary, the Facility's PCB and hazardous waste prevention and detection program. Respondent's revision shall be in accordance with Ohio EPA's comments and within fourteen days after receipt of Ohio EPA's comments, Respondents shall place the revised document into the operating record.
2. Respondent shall pay to Ohio EPA the amount of \$26,743.00 in settlement of Ohio EPA's claims for civil penalties for violations of the State of Ohio's solid waste laws,

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<sup>16</sup>effective August 15, 2003

which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provision:

- a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$26,743.00 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 Section 3734.281. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$26,743.00. 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 site. A copy of the letter and check shall be sent to Ohio EPA, DSIWM, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

## **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 a 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, 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 federal, state, and local 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  
Southeast District Office  
Division of Solid and Infectious Waste Management  
Attn: Unit Supervisor, DSIWM  
2195 Front Street  
Logan, Ohio 43138

and

Athens City-County Health Department  
278 West Union Street  
Athens, Ohio 45701

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.

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 the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

### **XIV. 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:**

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Joseph P. Koncelik, Director

#### **IT IS SO AGREED:**

**Kilbarger Construction, Inc.  
dba Athens-Hocking Reclamation Center**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title