



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

September 22, 2006

CERTIFIED MAIL

Greater Cleveland Ecology Association
323 Lakeside Avenue, Suite #400
Cleveland, Ohio 44113

Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Sincerely,

Kimberly Reese

Systems Management Unit

Division of Solid & Infectious Waste Management

cc: Ed Gortner, CO, DSIWM
Jeff Hurdley, Ohio EPA, Legal
Murat Tukel, NEDO, DSIWM

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

OHIO E.P.A.

SEP 22 2006

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Greater Cleveland Ecology Association : Director's Final Findings
323 Lakeside Avenue, Suite #400 : and Orders
Cleveland, Ohio 44113 :

Respondent

PREAMBLE

It is agreed by the Parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to 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 herein after 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.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency

Dmya Jackson 9-22-06

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Collinwood Shale Brick and Supply Company mined the property at 16569 St. Clair Avenue, Cleveland, Ohio (the "Site") for clay and shale through the early 1950's . Later, the mined area was filled with household trash from Cleveland and several neighboring communities until the mid 1960's.
2. Respondent is a not-for-profit organization that submitted a Class IV Composting Facility registration on May 24, 1999, in order to establish a composting facility at the Site.
3. Ohio Administrative Code ("OAC") Rule 3745-27-40(D) (effective October 31, 1993) states that class IV composting facilities may accept only source-separated yard waste and may utilize wood chips, straw, shredded newspaper, shredded cardboard, sawdust and/or shredded brush as bulking agents.
4. OAC Rule 3745-27-41(C) (effective October 31, 1993) states "[t]he registrant of a class IV composting facility shall submit to the director and to the approved health district having jurisdiction a registration[.]"
5. OAC Rule 3745-27-01(C)(11) (effective December 25, 1998) states, "[s]olid waste disposal facility" means any site, location, tract of land, installation, or building used for... composting[.]"
6. OAC Rule 3745-27-01(C)(5) (effective August 13, 2003) states, "[c]omposting facility" means a designated facility where composting of solid waste occurs in accordance with Chapters 3745-27 and 3745-37 of the Administrative Code."
7. OAC Rule 3745-27-01(B)(24) (effective December 25, 1998), as amended by OAC Rule 3745-27-01(O)(5) (effective August 15, 2003), states, "[o]perator" or "facility operator" means the person responsible for the on-site supervision of technical operations and maintenance of a solid or infectious waste facility, or any parts thereof, which may affect the performance of the facility and its potential environmental impact and/or any person who has authority to make discretionary decisions concerning the daily operations of the solid or infectious waste facility."
8. Respondent is an operator of a class IV composting facility (the "Facility") located at the Site.
9. Calabrese Cement & Masonry ("Calabrese") is the owner of the property on which Respondent operates a class IV composting facility.

10. OAC Rule 3745-27-01(B)(25) (effective December 25, 1998), as amended by OAC Rule 3745-27-01(O)(7) (effective August 15, 2003), states, "[o]wner" or "property owner" means the person who holds title to the property on which the solid waste facility... is located."
11. The City of Cleveland Department of Public Health ("CDPH") is approved to administer Ohio's solid and infectious waste regulations pursuant to OAC Rule 3745-37-08.
12. During a meeting with Respondent on July 20, 2000, Ohio EPA learned that Respondent's composting facility is located on an existing solid waste facility at the Site. As a result of this meeting, Ohio EPA notified Respondent by letter dated August 4, 2000, that authorization pursuant to OAC Rule 3745-27-13 is required prior to establishing a compost facility on land where a solid waste facility was operated.
13. OAC Rule 3745-27-13(A) (effective June 12, 1989), as amended by OAC Rule 3745-27-13(A) (effective August 15, 2003), states, "[n]o person shall, without authorization from the director, engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated. Any person proposing to engage in these activities on land where a hazardous waste facility or solid waste facility was operated shall comply with the requirements of this rule."
14. By letters dated June 25, 2004, and September 3, 2004, Ohio EPA cited Respondent for being in violation of OAC Rule 3745-27-13(A) for failing to obtain authorization from the director to engage in filling, grading, excavating, building, drilling, or mining on land where a solid waste facility was operated.
15. By correspondence dated September 5, 2001, June 10, 2002, November 5, 2002, March 15, 2004, July 13, 2004, and August 9, 2004, Respondent acknowledged its requirement to obtain authorization from the director pursuant to OAC Rule 3745-27-13(A).
16. OAC Rule 3745-27-45(A)(6) states in pertinent part, "The owner or operator of a composting facility shall... prepare, maintain and implement a contingency plan to address discovery of prohibited material, fire, explosion, spills, and equipment failure. The owner or operator shall have a copy of the contingency plan available for inspection by Ohio EPA or the approved health department during normal operating hours."
17. During inspections conducted on May 26, 2004, and May 12, 2005, CDPH observed that Respondent failed to have a contingency plan available for inspection. By letters dated June 16, 2004, and May 13, 2005, CDPH cited the Respondent for

being in violation of OAC Rule 3745-27-45(A)(6) for failing to have a contingency plan available for inspection by the approved health department.

18. OAC Rule 3745-27-45(G)(2) states,

“The owner or operator of a composting facility shall control surface water runoff and run-on, prevent ponding and erosion, and minimize the impact to surface and ground waters. For the purpose of this rule runoff includes precipitation that has fallen onto the composting facility and has not come in contact with any compost products, or solid wastes including feedstocks, bulking agents, or additives. At a minimum, the owner or operator shall do the following: (2) Divert surface water from the materials placement areas. The land surface of the waste handling, composting, compost curing, and cured compost areas of the facility shall be greater than or equal to one per cent in slope and less than or equal to six per cent in slope so as to direct surface water to collection points or otherwise control the surface water drainage to minimize erosion.”

19. During inspections conducted on May 26, 2004, and May 12, 2005, CDPH observed that there were several areas at the Site where rain and other surface water runoff was ponding. By letters dated June 16, 2004, and May 13, 2005, CDPH cited Respondent for not controlling surface water at the Site, in violation of OAC Rule 3745-27-45(G)(2).

20. OAC Rule 3745-27-45(H)(3) states, “The owner or operator of a class I, II, III or IV composting facility shall do the following: (a) Manage leachate in accordance with Chapter 6111. of the Revised Code. (b) Take action to minimize the production of leachate and control, or eliminate, ponding of leachate and the conditions that contribute to the discharge of leachate from the facility. (c) Maintain any structures or mechanisms used for the collection or containment of leachate to prevent blockage, clogging, or breakage that may impede proper collection or containment of leachate.

21. During an inspection conducted on May 26, 2004, CDPH observed that Respondent was allowing leachate from the composting operation to flow and pond in several areas at the Site. By letter dated June 16, 2004, CDPH cited the Respondent for failing to manage leachate in accordance with ORC Chapter 6111., take action to minimize the production of leachate, and maintain structures or mechanisms used for the collection or containment of leachate, in violation of OAC Rule 3745-27-45(H)(3).

22. OAC Rule 3745-27-45(K)(3) states in pertinent part, “The owner or operator shall... maintain a daily log(.”)

23. During an inspection dated May 24, 2004, CDPH observed that Respondent was not maintaining any daily logs. By letter dated June 16, 2004, CDPH cited the Respondent for failing to maintain daily logs, in violation of OAC Rule 3745-27-45(K)(3)
24. On June 20, 2005, Ohio EPA received from Respondent a document entitled, "*Rule 13 Authorization Application; Greater Cleveland Ecology Association; Class IV Composting Facility Cleveland, Ohio.*"

V. ORDERS

The Director hereby issues the following Orders:

1. Within sixty (60) days after the effective date of these Orders, Respondent shall *resubmit* a proposal to Ohio EPA of how it has and will continue to engage in filling, grading, excavating, building, drilling, or mining at the Site, pursuant to OAC Rule 3745-27-13.

At a minimum, Respondent shall include in its plan for approval,

- A. a topographical drawing of the Site that clearly delineates the footprint of waste placement areas of the former landfill, any areas where a hard base (asphalt) surface has been applied, and all areas where composting activities take place. If Respondent determines that composting activities are occurring over areas of the footprint of the former landfill where a two feet deep hard base (asphalt) has not been applied, Respondent shall identify in its plan a schedule for placement of a two feet deep hard base (asphalt) surface over these areas;
- B. a detailed drawing with specifications and a schedule for the proper construction of engineered control structures designed to control surface water runoff and run-on, prevent ponding and erosion, and minimize the impact to surface and ground waters, in accordance with OAC Rule 3745-27-45(G);
- C. a detailed drawing with specifications and a schedule for the proper construction of engineered control structures designed to minimize the production of leachate and control, or eliminate ponding of leachate, in accordance with OAC Rule 3745-27-45(H). If Respondent intends to use the existing pond on site for leachate collection, Respondent shall determine if this pond is situated above the footprint of waste placement areas of the former landfill. If so, Respondent shall determine the depth and composition of any liner system beneath the pond. If the material underneath the pond does not constitute an adequate liner system capable of preventing leachate from entering the former landfill, Respondent shall include in this plan a

detailed drawing with specifications and a schedule for the removal of the existing pond and the proper construction of a new pond; and

- D. a written narrative of how the Site will be graded such that standing water will be minimized.

If Ohio EPA determines that Respondent's proposal is deficient, Ohio EPA shall notify Respondent in writing of those deficiencies. Within sixty (60) days after receiving such notice, Respondent shall re-submit its proposal such that it addresses any remaining deficiencies. If Ohio EPA, after receiving a re-submittal, determines that Respondent failed to address the remaining deficiencies, Ohio EPA may approve Respondent's proposal with conditions.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall prepare, maintain and implement a contingency plan to address discovery of prohibited material, fire, explosion, spills, and equipment failure. Respondent shall have a copy of the contingency plan available for inspection by Ohio EPA or the CDPH during normal operating hours.
3. Within seven (7) days after the effective date of these Orders, Respondent shall maintain daily logs at the Site.
4. Within thirty (30) days after the effective date of these Orders, Respondent shall pay the amount of \$10,714.00 in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3734 and which will be deposited into the Environmental Remediation Fund established pursuant to ORC § 3734.281. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$8,571.20 of the total amount. 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 Respondent. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
5. In lieu of paying the remaining \$2,142.80 of the civil penalty identified in Order No. 4 above, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$2,142.80 to the Ohio EPA Clean Diesel School Bus Program. Respondent shall make payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$2,142.80. 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. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Assistant Chief, SIP

Development and Enforcement, P.O. Box 1049, Columbus, Ohio 43216-1049.

6. Should Respondent fail to fund the Diesel Bus SEP in accordance with Order No. 5 above, Respondent shall pay Ohio EPA \$10,714.00 of the civil penalty in accordance with the procedures in Order No. 4.
7. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA a single amount of \$6,382.00 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 Remediation Fund established pursuant to ORC § 3734.281. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$6,382.00. 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 check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, 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 for Respondent.

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 the Site.

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 the Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 E. Aurora Rd, Twinsburg, OH 44087
Attn: Solid Waste Supervisor

and

City of Cleveland Department of Health
Division of the Environment
1925 St. Clair Avenue
Cleveland, Ohio 44114

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

XI. RESERVATION OF RIGHTS

Ohio EPA and the 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 the 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 the 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

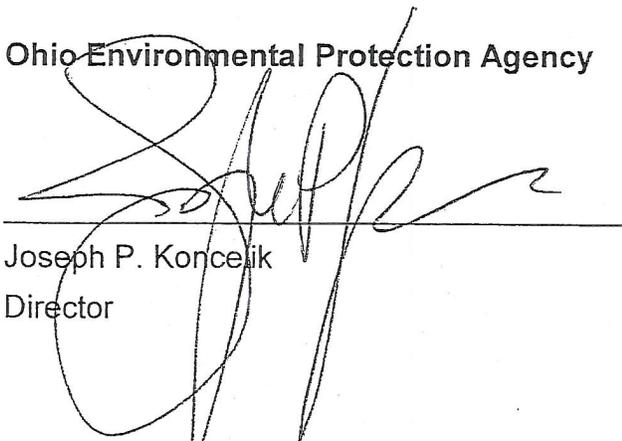
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. 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:

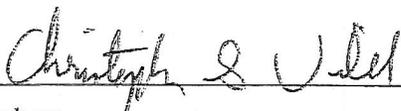
Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

IT IS SO AGREED:

Greater Cleveland Ecology Association



Signature Christopher Vild

9/12/06

Date