

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Browning-Ferris Industries of Ohio, Inc	:	<u>Director's Final Findings</u>
43502 Oberlin-Elyria Rd.	:	<u>and Orders</u>
Oberlin, Ohio 44074	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Browning-Ferris Industries of Ohio, 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 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. Browning-Ferris Industries of Ohio, Lorain County II municipal solid waste landfill ("Facility") is located at 43502 Oberlin-Elyria Road, Oberlin, Lorain 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).
5. On September 27, 2005, Ohio EPA received a verified complaint dated August 9, 2005, alleging that Respondent continually failed to apply daily cover. Failure to apply daily cover is a violation of OAC Rule 3745-27-19(F), which states:

"Daily cover shall be applied to all exposed solid waste by the end of the working day to control fire hazards, blowing litter, odors, insects, vectors and rodents. In no event shall solid wastes be exposed for more than twenty-four hours after unloading."
6. The September 27, 2005, verified complaint further alleged that Respondent's operation of the Facility has, for well over two years, created an odor nuisance. Creating an odor nuisance is a violation of OAC Rule 3745-27-19(B)(3), which states:

"The owner or operator shall operate the facility in such a manner that noise, dust and odors are strictly controlled so as not to cause a nuisance or a health hazard."
7. Ohio EPA conducted an investigation to determine if the allegations contained in the verified complaint could be substantiated. The investigation included a review of all applicable documents maintained by Ohio EPA and Lorain County Health Department for the past six years as well as inspections of the Facility.
8. On November 21, 2000, Respondent contacted the Lorain County Health Department to inform the health department that a fire had occurred at the Facility. Based on Lorain County Health Department investigation, correspondence was sent to Respondent on December 20, 2000, informing it of the following violations:
 - a. OAC Rule 3745-27-19(E)(20) (effective March 1, 1996) for depositing waste at the working face with a temperature likely to cause a fire; and
 - b. OAC Rule 3745-27-19(F) (effective March 1, 1996) for failure to apply adequate daily cover.

9. Lorain County Health Department conducted an inspection of the Facility on September 5, 2001. In correspondence dated November 9, 2001, Lorain County Health Department notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(E)(30)(sic¹)(effective March 1, 1996) for acceptance and disposal of whole scrap tires; and
 - b. OAC Rule 3745-27-09(J)(1)(effective June 1, 1994) for failure to maintain an operating record index that accurately identifies each document in the operating record.
10. Lorain County Health Department conducted an inspection of the Facility on October 29, 2001. In correspondence dated October 30, 2001, Lorain County Health Department notified Respondent it was in violation of OAC Rule 3745-27-09(J)(1)(effective June 1, 1994) for failure to maintain an operating record index that accurately identifies each document in the operating record.
11. Based on the review of the April 2002 Ground Water Quality Report submitted by Respondent, Ohio EPA notified Respondent via correspondence dated September 13, 2002, that it was in violation of OAC Rule 3745-27-10(C)(1) for failure to use sampling and analysis procedures protective of human health and the environment.
12. Lorain County Health Department conducted an inspection of the Facility on November 6, 2002. In correspondence dated November 7, 2002, Lorain County Health Department notified Respondent that it was in violation of OAC Rule 3745-27-19(E)(30)(effective March 1, 1996) for acceptance and disposal of whole scrap tires.
13. Lorain County Health Department conducted an inspection of the Facility on April 22, 2003. In correspondence dated May 27, 2003, Lorain County Health Department notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(G)(1) (effective March 1, 1996) for failure to apply adequate Intermediate Cover; and
 - b. OAC Rule 3745-27-19(E)(30)(effective March 1, 1996) for acceptance and disposal of whole scrap tires.
14. Lorain County Health Department conducted an inspection of the Facility on September 29, 2003. In correspondence dated November 6, 2003, Lorain County Health Department notified Respondent of the following violations:

¹All citations of OAC Rule 3745-27-19(E)(30) should have been cited as OAC Rule 3745-27-19(E)(30)(a)

- a. OAC Rule 3745-27-19(G)(1) (effective August 15, 2003), for failure to apply adequate Intermediate cover; and
 - b. OAC Rule 3745-27-19(J)(4) (effective August 15, 2003), for failure to correct the conditions causing ponding.
15. Lorain County Health Department conducted an inspection of the Facility on November 10, 2003. In correspondence dated November 10, 2003, Lorain County Health Department notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(J)(1) (effective August 15, 2003), for failure to ensure that surface water control structures cause minimal erosion; and
 - b. OAC Rule 3745-27-19(J)(4) (effective August 15, 2003), for failure to correct the conditions causing ponding.
16. Lorain County Health Department and Ohio EPA conducted an inspection of the Facility on April 29, 2004. In correspondence dated April 30, 2004, Lorain County Health Department notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(F) (effective August 15, 2003), for failure to apply adequate daily cover; and
 - b. OAC Rule 3745-27-19(J)(4) (effective August 15, 2003), for failure to correct erosion gullies.
17. Lorain County Health Department conducted an inspection of the Facility on June 30, 2004. In correspondence dated July 1, 2004, Lorain County Health Department notified Respondent it was in violation of OAC Rule 3745-27-19(J)(3) for failure to correct the conditions causing erosion.
18. Lorain County Health Department and Ohio EPA conducted an inspection of the Facility on September 10, 2004. In correspondence dated November 19, 2004, Lorain County Health Department notified Respondent that it was in violation of OAC Rule 3745-27-19(F), for failure to apply adequate daily cover.
19. Respondent contacted Ohio EPA via telephone on September 9, 2004, and informed Ohio EPA that the hazardous waste disposed of in the Facility on September 7, 2004, would be removed during the week of October 4, 2004, and disposed of at a licensed hazardous waste treatment, storage, and disposal facility.
20. Ohio EPA received correspondence from Respondent on September 16, 2004, stating that approximately 20 cubic yards of refractory brick that was hazardous for barium was inadvertently accepted at the Facility for disposal on September 7, 2004.

21. In correspondence dated September 30, 2004, Ohio EPA notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(E)(8)(c) for acceptance and disposal of hazardous waste; and
 - b. ORC Sections 3745.02(E) and 3734.02(F) for unauthorized disposal of hazardous waste.
22. In correspondence dated November 22, 2004, Respondent informed Ohio EPA that the hazardous waste disposed of on September 7, 2004, was completely removed from the Facility by October 28, 2004, and disposed of at Envirosafe treatment and disposal facility in Oregon, Ohio.
23. Lorain County Health Department conducted an inspection of the Facility on November 16, 2004. In correspondence dated November 16, 2004, Lorain County Health Department notified Respondent that it was in violation of OAC Rule 3745-27-19(F), for failure to apply adequate daily cover.
24. Lorain County Health Department and Ohio EPA conducted an inspection of the Facility on February 11, 2005. In correspondence dated February 16, 2005, Lorain County Health Department notified Respondent that it was in violation of OAC Rule 3745-27-19(F), for failure to apply adequate daily cover.
25. Lorain County Health Department and Ohio EPA conducted an inspection of the Facility on June 27, 2005. In correspondence dated June 28, 2005, Lorain County Health Department notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(F), for failure to apply adequate daily cover;
 - b. OAC Rule 3745-27-19(9)(sic)², for failure to control scattered litter; and
 - c. OAC Rule 3745-27-09(F)(1), for failure to place documents into the operating record.
26. Lorain County Health Department and Ohio EPA conducted an inspection of the Facility on September 1, 2005. In correspondence dated September 16, 2005, Lorain County Health Department notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(F), for failure to apply adequate daily cover; and
 - b. OAC Rule 3745-27-19(E)(9), for failure to control scattered litter.

² Correct citation was OAC 3745-27-19(E)(9)

27. Lorain County Health Department and Ohio EPA conducted an inspection of the Facility on November 4, 2005. In correspondence dated November 7, 2005, Lorain County Health Department notified Respondent of the following violations:
- a. OAC Rule 3745-27-19(F), for failure to apply adequate daily cover;
 - b. OAC Rule 3745-27-19(E)(9), for failure to control scattered litter; and
 - c. OAC Rule 3745-27-19(E)(7)(e), for failure to deposit all waste at the working face.
28. On November 5, 2005, and January 23, 2006, Ohio EPA conducted an inspection of the Facility. In correspondence dated February 6, 2006, Ohio EPA notified Respondent of the following violations:
- a. OAC Rule 3745-27-19(F) for failure to apply adequate daily cover; and
 - b. OAC Rule 3745-27-19(B)(3): for failure to operate the Facility in a manner that controls odors.

Additionally the February 6, 2006, Notice of Violation ("NOV") informed Respondent that hydrogen sulfide gas ("H₂S") measurements were taken near the working face and along the haul road for the Facility. Ohio EPA further informed Respondent that the H₂S readings ranged from 2 ppb to 30 ppb. Background for H₂S in area is 1 ppb.

29. In response to the February 6, 2006, NOV, Ohio EPA received written correspondence dated February 19, 2006, wherein Respondent stated the following actions had or would be implemented to address the afore mentioned violations:
- a. Employees involved in the application of daily cover have had their work hours increased;
 - b. New control structures including an increase in litter fencing and berms have been added;
 - c. Daily meetings are held at the working face;
 - d. Extensive gas control system improvements have been completed and would be activated pending approval from Ohio EPA's Division of Air Pollution Control; and
 - e. Beginning on February 27, 2006, Respondent planned to implement the use of a daily inspection form to address the adequate application of daily cover at the Facility. The form requires that the application of daily cover be inspected and that Facility management sign the form in acknowledgment

that the daily cover placed on the Facility is adequate. Additionally the form is to include a photograph the active area of the Facility after daily cover has been applied.

30. On April 10, 2006, Ohio EPA conducted an inspection of the Facility. In correspondence dated April 26, 2006, Ohio EPA notified Respondent of the following violations:
 - a. OAC Rule 3745-27-19(F) for failure to apply adequate daily cover;
 - b. OAC Rule 3745-27-19(J)(3) for failure to correct the conditions causing ponding;
 - c. OAC Rule 3745-27-19(B)(3) for failure to operate the Facility in a manner that controls odors; and
 - d. OAC Rule 3745-27-19(E)(8)(g) for acceptance of whole scrap tires for disposal.

31. In response to the April 26, 2006, NOV, Ohio EPA received written correspondence dated May 5, 2006, wherein Respondent stated the following actions had or would be implemented to address the afore mentioned violations.
 - a. Employees involved in the application of daily cover will review training pertaining to, but not limited to, the correct procedural methods for placing and maintaining the tipper;
 - b. Areas of ponding water have been addressed in and around the Facility;
 - c. Employees involved with the working face operation have reviewed the practices outlined to maintain the working face in accordance with OAC Rule 3745-27-19(E)(8);
 - d. Respondent planned to bring online a temporary control device to help with the management of odor causing emissions. Respondent intended to cease all leachate recirculation at the Facility until the temporary control device is brought online; and
 - e. The working face has been reduced in size to help reduce the issues that lead to the April 26, 2006, NOV.

32. Between December 1, 2003, and January 28, 2006, Ohio EPA has received 85 separate citizen complaints regarding odors emanating from the Facility.

V. ORDERS

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

1. Within thirty (30) days after the effective date of these Orders, Respondent shall provide training to all employees that are involved in the daily operations of the Facility. The training shall include, at a minimum, a discussion of OAC Rule 3745-27-19(F), proper procedures for applying daily cover, and a demonstration of the application of adequate daily cover.
2. The Respondent shall continue with annual retraining for a minimum of five years after the effective date of these orders and shall conduct additional training for all new personnel who will be involved in the daily operations of the Facility.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall provide documentation to Ohio EPA certifying that all persons designated in Order No. 1 have received the training required by Order No. 1. The documentation shall be signed by a responsible official of the Respondent.
4. Within fourteen (14) days after the effective date of these Orders, Respondent shall begin taking daily photographs of the working face to clearly document that adequate daily cover has been applied. Photographs shall be taken both before the application of daily cover and immediately after the application of daily cover. Respondent shall continue to take photographs to document the application of adequate daily cover for one year after the effective date of these Orders.
5. All photographs required by Order No. 4 shall be maintained at the Facility and be made available to Ohio EPA and the Lorain County Health Department upon request. The photographs shall be marked with the date and time that the photograph was taken along with the name of the photographer and a description of the general area in which the photograph was taken.
6. Respondent shall patrol the perimeter of the Facility daily to ascertain if any odors are leaving the boundaries of Facility. If odors are detected beyond the boundary of Respondent's Facility, Respondent shall take all reasonable steps to determine the source of the odor and take corrective actions accordingly. Respondent shall continue to patrol the perimeter of the Facility for a minimum of five (5) years after the effective date of these Orders.

7. Respondent shall conduct a complete evaluation of the Facility's explosive gas extraction system to determine if it is adequate for controlling gas at the Facility. Respondent shall provide the findings of this evaluation along with all supporting documentation to Ohio EPA in writing within ninety (90) days after the effective date of these Orders.
8. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of eleven thousand three hundred ninety-one dollars (\$11,391.00) 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 eleven thousand three hundred ninety-one dollars (\$11,391.00). 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. 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 Enforcement Coordinator 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 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 or the Facility.

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
Northeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2110 East Aurora Road
Twinsburg, Ohio 44087

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:

Joseph P. Koncelik, Director

IT IS SO AGREED:

Browning-Ferris Industries of Ohio, Inc.

Signature

Date

Title