

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Rumpke Sanitary Landfill, Inc.	:	<u>Director's Final Findings</u>
10795 Hughes Road	:	<u>and Orders</u>
Cincinnati Ohio, 45251	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

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

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and 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. When the term below is used in these Orders, the following definition applies:

1. "Treatment Storage and Disposal facility" ("TSD") means any facility operating under an Ohio hazardous waste installation and operation permit, or from a facility in another state operating under a license or permit issued in accordance with the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C.A. 6921, as amended.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Rumpke Sanitary Landfill, Inc. ("Facility") is located at 10795 Hughes Road, Cincinnati, Hamilton 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. 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 authorizing final document(s) listed in paragraph (l) of rule 3745-27-09 of the Administrative Code..."
7. In accordance with OAC Rule 3745-27-19(E)(8)(c), the owner or operator shall not accept for disposal or dispose of "[m]aterials 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...."

Hazardous Waste Acceptance from Clean Harbors

9. By e-mail dated September 29, 2005, Ohio EPA Division of Hazardous Waste Management ("DHWM") notified Ohio EPA Division of Solid and Infectious Waste Management ("DSIWM") it had been contacted by Clean Harbors-Spring Grove Resource Recovery ("Clean Harbors"), a treatment storage and disposal facility located in Cincinnati. Clean Harbors notified DHWM that it had inadvertently sent two loads of hazardous waste to the Facility for disposal.
10. On September 29, 2005, Ohio EPA received a telephone call from John Butler, an employee of the Respondent, stating that the Facility had accepted two loads of hazardous waste for disposal.
11. On September 30, 2005, Ohio EPA received a facsimile from Clean Harbors regarding sampling results obtained from the generator of the hazardous waste, Dasseault Falcon Jet. Results of Dasseault's sampling of the same waste stream sent to Clean Harbors and ultimately Respondent's Facility for disposal indicated that the waste stream contained approximately 14 parts per million ("ppm") of chromium, well above the regulatory limit of 5 ppm.
12. In written correspondence dated October 5, 2005, Ohio EPA received notification from Respondent of its acceptance and disposal of hazardous waste. Respondent further stated that approximately 1080 pounds of hazardous waste was accepted on July 11, 2005, and another 900 pounds of hazardous waste were accepted sometime during the week of September 20, 2005.

Respondent further stated in the October 5, 2005, correspondence that the following actions had been taken:

- a. Service to Clean Harbors was immediately suspended upon Respondent being notified that hazardous waste had been sent to its landfill;
 - b. Prior to reinstatement of service Respondent required Clean Harbors to certify waste pending disposal did not contain hazardous waste and did not contain waste from Dasseault Falcon Jet;
 - c. Communicated with Ohio EPA DHWM and confirmed that Clean Harbor's had an acceptable compliance history and approved waste analysis plan.
13. In Correspondence dated October 24, 2005, Ohio EPA sent a notice of violation ("NOV") letter to Respondent notifying it of violations, including the following:
 - a. OAC Rule 3745-27-19(E)(8)(c) for acceptance of hazardous waste for disposal;

- b. ORC Section 3734.02(F)(1) for disposal of hazardous waste;
 - c. ORC Section 3734.02(E)(2), for using a solid waste facility for the disposal of hazardous waste.
14. Respondent replied to the October 24, 2005, NOV by correspondence dated November 18, 2005, stating the following:
- a. That Respondent had been notified by Clean Harbors that the waste sent to Respondents Facility during the week of September 20, 2005, was not hazardous. The hazardous waste in question allegedly had never left the Clean Harbors facility.
 - b. Furthermore, Clean Harbors conducted an analysis of the waste retained at its facility and found the waste contained allegedly 3.7ppm of chromium, which is below the regulatory limit of 5 ppm.
 - c. Respondent stated that based on the analytical results of the waste retained by Clean Harbors, it does not believe that the waste accepted at its Facility on July 11, 2005, was hazardous and requested that the October 24, 2005, NOV be rescinded.
15. On November 18, 2005, Respondent submitted a revision of the Facility's Prevention of Unauthorized and Hazardous Waste Program ("Program") to Ohio EPA. The revision included a procedure for evaluating consolidators of waste (or TSD-type facilities). Another minor revision was submitted to Ohio EPA on December 14, 2005.
16. On December 12, 2005, Ohio EPA DHWM took samples of the waste that was believed to have been sent to Respondent during the week of September 20, 2005, but was retained by Clean Harbors. These samples were split with Clean Harbors and then sent for analysis by both Clean Harbors and Ohio EPA. The analysis obtained by Ohio EPA showed that the waste retained at the Clean Harbors facility was hazardous waste and that the samples taken contained 11.1, 2.21, and 2.05 mg/l of Chromium respectively.

By letter dated January 6, 2006, Ohio EPA received a summary of the analytical results obtained by Clean Harbors. The analyses showed that the samples had an upper statistical concentration of Chromium of 6.43 mg/l exceeding the regulatory limit of 5 mg/l.

17. In correspondence dated January 10, 2006, Ohio EPA sent an amended NOV to Respondent acknowledging the acceptance of one load of hazardous waste from Clean Harbors and notifying Respondent of violations including the following:
 - a. OAC Rule 3745-27-19(E)(8)(c) for acceptance of hazardous waste for disposal;
 - b. ORC Section 3734.02(F)(1) for disposal of hazardous waste; and
 - c. ORC Section 3734.02(E)(2), for using a solid waste facility for the disposal of hazardous waste.

Hazardous Waste Acceptance from General Polymers, Inc.

18. In correspondence dated October 24, 2005, Ohio EPA received notification from Respondent that it had accepted a total of 554 pounds of hazardous waste for disposal from General Polymers, Inc. Respondent further stated that the waste consisted of solvent wipes/rags and was accepted over a four-month period from February 17, 2005, through May 18, 2005.
19. The solvent wipes/rags accepted by Respondent for disposal are considered characteristic hazardous wastes for ignitability (D001) and Methyl Ethyl Ketone (D035).
20. Based upon estimates obtained from the generator of the waste, General Polymers, Inc., Ohio EPA believes that the 554 pounds of hazardous waste were actually sent to the Facility over a ten-month period.
21. In correspondence dated February 27, 2006, Ohio EPA sent a NOV to Respondent notifying it of the violations including the following:
 - a. OAC Rule 3745-27-19(B)(1) 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;
 - b. OAC Rule 3745-27-19(B)(2) for failure to conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing documents;
 - c. OAC Rule 3745-27-19(E)(8)(c) for acceptance of hazardous waste for disposal;

- d. OAC Rule 3745-27-19(L) for failure to implement a written program at the sanitary landfill facility with procedures that are sufficient to detect and prevent the disposal of regulated hazardous wastes;
 - e. ORC Section 3734.02(F)(1) for disposal of hazardous waste; and
 - f. ORC Section 3734.02(E)(2), for using a solid waste facility for the disposal of hazardous waste.
22. Respondent replied to the February 27, 2006, NOV by correspondence dated March 17, 2006, stating the following:
- a. Service to General Polymers was immediately suspended upon Respondent's finding that hazardous waste had been sent to its landfill;
 - b. A meeting between Respondent and General Polymers was held on October 20, 2005, wherein Respondent informed General Polymers that no Hazardous or PCB waste may be placed in containers sent to Respondent and that disposal service would remain suspended until the waste coming from the General Polymers facility had been evaluated and found acceptable;
 - c. A document was sent to all commercial customers to inform them of the wastes that were not permitted at the Facility and to help the customers identify waste streams that require evaluation and approval by Respondent prior to acceptance.
23. To date, neither the hazardous waste accepted from Clean Harbors nor the hazardous waste accepted from General Polymers for disposal has been removed from Respondent's Facility and violations of ORC Chapter 3734. and OAC Rule 3745-27-19 remain.

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 evaluate and revise the Facility's PCB and hazardous waste prevention and detection program, which is required by OAC Rule 3745-27-19(L), so as to prevent future occurrences of illegal hazardous waste acceptance at the Facility. At a minimum, the revisions to the PCB and hazardous waste prevention and detection program shall include the following:

- a. Respondent shall revise its Waste Characterization Data Sheets to require review of Material Safety Data Sheets (MSDS), when available.
 - b. Respondent shall perform a quarterly audit of all TSD facilities from which it accepts waste. At a minimum, this audit shall include a review of not less than twenty percent, but not greater than 100 reviews per quarter, of the new waste profiles accepted at the TSD and accepted for disposal at the Respondent's Facility.
 - c. Respondent shall make a notation on the daily log of operations, or upon a separate log maintained at the Facility, each time a new waste stream subject to review by the PCB and hazardous waste prevention and detection program is accepted at the Facility.
 - d. Respondent shall perform a random audit of at least one waste load received from a TSD at the Facility on a monthly basis to verify that the waste load is acceptable for disposal at the Facility. The random monthly audit shall include a review of the waste profile for the load and MSDS, when available.
 - e. Respondent shall maintain a copy of all audit results required by Orders No. 1b and 1d above at the Facility, and shall make these results available to Ohio EPA for review upon request.
2. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit the Facility's revised PCB and hazardous waste prevention and detection program to Ohio EPA for comment, and within fourteen days after receipt of Ohio EPA's comments, Respondent shall address Ohio EPA's comments and place the revised document into the operating record.
 3. Within thirty (30) days after the effective date of these Orders, Respondent shall increase the leachate monitoring frequency for Chromium and Methyl Ethyl Ketone to at least quarterly monitoring unless otherwise notified by the Director in writing. Respondent shall submit the results of this quarterly monitoring to Ohio EPA in writing within fourteen days after receiving the analytical results of the samples.
 4. Immediately upon the effective date of these Orders, Respondent shall continue to record the information required by OAC 3745-27-19(E)(10)(a), on the daily log forms prescribed by the Director for municipal solid waste landfills. Respondent shall complete all sections of the form and shall in a comment section for each load accepted, accurately describe the specific type of waste. Annotations shall not be used to indicate waste type.
 5. Respondent shall maintain a copy of the daily logs required by Order No. 4 at the Facility. These copies may be maintained electronically but shall be made readily available for inspection by Ohio EPA and the Hamilton County Health Department

upon request of either Ohio EPA or the Hamilton County Health Department. Upon request of either Ohio EPA or the Hamilton County Health Department, Respondent shall provide Ohio EPA or the Hamilton County Health Department with a paper copy of the daily logs forms.

6. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of nine thousand eight hundred seventy-nine dollars (\$9,879.00) 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 nine thousand eight hundred seventy-nine dollars (\$ 9,879.00). 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 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 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
Southwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
401 East Fifth Street
Dayton, Ohio 45402

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:

Rumpke Sanitary Landfill, Inc.

Signature

Date

Title