OHIO E.P.A.
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- ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Apex Environmental LLC	:	Director's Final Findings
11 County Rd 78	:	and Orders
Amsterdam, Ohio 43903	:	

Respondent

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

By: [signature] Date: 11-13-08

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Apex Environmental LLC ("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 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. The Apex Sanitary Landfill ("Facility") is located at 11 County Road 78, Amsterdam, Jefferson County, Ohio.

2. The 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 the license holder of the Facility.

3. The Facility is a "sanitary landfill facility" as that term is defined in OAC Rule 3745-27-01(S)(4) and is authorized to accept and dispose of "solid waste" as that term is defined in ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

4. ORC Section 3734.01(F) defines the term "disposal" as "the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes ... into or on any land or ground[.]"

5. The Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

6. The Jefferson County General Health District ("JCGHD") is approved to administer Ohio's solid waste laws and regulations pursuant to ORC Section 3734.08(A) and OAC Rule 3745-37-08.

Acceptance & Disposal of Bulk Liquid

7. OAC Rule 3745-27-19(E)(8)(b) states in pertinent part, "Disposal Restrictions. The owner or operator shall not accept for disposal or dispose of any of the following materials at a sanitary landfill facility: Containerized bulk liquids or non-containerized liquids without authorization from the director."

8. On June 11, 2008, an Ohio EPA employee observed the disposal of approximately 30 metal 55-gallon barrels, including all of their liquid contents, into the Facility's working face. After which, the Ohio EPA employee then inspected one of the barrels and found remnants of metal cuttings and an oily sludge.

9. By email correspondence dated June 12, 2008, the Respondent notified Ohio EPA "[p]reliminary information indicates that all material was soils contaminated with diesel fuel. All free liquids would have been fuel oil mixed with water. We have been in contact with the customer and they are sending us paperwork on all drummed waste."

10. On June 17, 2008, the Ohio EPA employee assigned to inspect the Facility for operational activities conducted a follow up inspection to investigate the acceptance of bulk liquid on June 11, 2008. A review of the Respondent's records indicated that bulk liquids were accepted and disposed at the Facility twice on June 11, 2008, once during the incident identified in Finding 8, above, and once earlier that morning.

11. By letter dated July 17, 2008, Ohio EPA notified the Respondent that the two separate incidents of acceptance of bulk liquids on June 11, 2008, are violations of OAC Rule 3745-27-19(E)(8)(b).

12. The Respondent excavated the area where the drums had been disposed and recovered some of the drums. All of the recovered drums and surrounding material were placed in a container. On June 23, 2008, Civil & Environmental Consultants, Inc., on behalf of the Respondent, collected samples from the containerized materials, including the contents of three separate drums. On or about July 2, 2008, the Respondent sent to Ohio EPA analytical results indicating that the samples collected were not hazardous waste.

13. By letter dated August 18, 2008, Ohio EPA notified the Respondent that a continued review of Respondent's records indicated that bulk containerized liquids were accepted and disposed of at the Facility on April 18, 2008, a violation of OAC Rule 3745-27-19(E)(8)(b).

14. By letter dated August 21, 2008, the Respondent replied to Ohio EPA's letter dated July 17, 2008. In particular, the Respondent acknowledged that Rapid Waste Disposal Inc., a Brooklyn, New York, company, delivered the containerized bulk liquids to the Facility for disposal. Further, the Respondent indicated that it no longer accepts waste from Rapid Waste Disposal Inc. and has revised its *Waste Analysis Plan* to screen waste entering the Facility. In addition, the Plan describes the steps the Respondent must follow in order to screen and dispose of "special wastes."

15. On or about August 21, 2008, Respondent submitted to Ohio EPA a revised Waste Analysis and Screening Plan ("WASP"). The Respondent's WASP describes how operations will screen out prohibited materials from the Facility. According to the Respondent, the WASP has been placed into the Facility's operating record.

Operational Violations

Engineered Component

16. OAC Rule 3745-27-19(E)(1)(c) states, "The 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."

17. By letters dated May 6, 2008, and May 22, 2008, the JCGHD and Ohio EPA respectively notified the Respondent that during an inspection that occurred on April 24, 2008, transitional cover located on the final west slope of Phase 1 had significant erosion, in violation of OAC Rule 3745-27-19(E)(1)(c).

18. By letter dated May 22, 2008, Ohio EPA notified the Respondent that the violation of OAC Rule 3745-27-19(E)(1)(c) was found to have been abated during the JCGHD's May 2, 2008 inspection.

Intermediate Cover

19. OAC Rule 3745-27-19(G)(2) states in pertinent part, "Intermediate cover material shall be nonputrescible and have low permeability to water, good compactability, cohesiveness, and relatively uniform texture, and shall not contain large objects in such quantities as may interfere with its application and intended purpose. A soil layer, a minimum of twelve inches thick, consisting of well-compacted loam, silt loam, clay loam, silty clay loam, silty clay or some combination thereof, shall be used."

20. By letters dated May 6, 2008, and May 22, 2008, the JCGHD and Ohio EPA respectively notified the Respondent that during an inspection that occurred on April 24, 2008, solid waste was found to be comingled with intermediate cover material on the north side of Phase 1, in violation of OAC Rule 3745-27-19(G)(2).

21. By letter dated May 22, 2008, Ohio EPA notified the Respondent that the violation of OAC Rule 3745-27-19(G)(2) was found to have been abated during the JCGHD's May 2, 2008 inspection.

22. OAC Rule 3745-27-19(G)(4) states, "The owner or operator shall perform measures to protect the intermediate cover from erosion."

23. By letters dated May 6, 2008, and May 22, 2008, the JCGHD and Ohio EPA respectively notified the Respondent that during an inspection that occurred on April 24, 2008, measures had not been taken to control erosion in Phase 1 of the Facility in violation of OAC Rule 3745-27-19(G)(4).

24. By letter dated May 22, 2008, Ohio EPA notified the Respondent that the violation of OAC Rule 3745-27-19(G)(4) was found to have been abated during the JCGHD's May 2, 2008 inspection.

Leachate

25. OAC Rule 3745-27-19(K)(1) states, "Leachate management. (1) If a leachate outbreak occurs at the sanitary landfill facility, the owner or operator shall repair all outbreaks 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."

26. By letters dated May 6, 2008, and May 22, 2008, the JCGHD and Ohio EPA respectively notified the Respondent that during an inspection that occurred on April 24, 2008, uncontrolled leachate outbreaks were observed on the south slope of Phase 1, in violation of OAC Rule 3745-27-19(K).

27. By letter dated May 22, 2008, Ohio EPA notified the Respondent that the violation of OAC Rule 3745-27-19(K)(1) was found to have been abated during the JCGHD's May 2, 2008 inspection.

Litter

28. OAC Rule 3745-27-19(E)(9) states, "The 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."

29. By letter and inspection dated January 30, 2008, JCGHD notified the Respondent that the Respondent was not taking reasonable measures to collect, contain, and dispose of scattered litter found in trees and brush to the north of the area of waste placement, in violation of OAC Rule 3745-27-19(E)(9).

30. According the JCGHD's field notes, the Respondent corrected the violation for failing to collect, contain and dispose of scattered litter on February 2, 2008.

V. ORDERS

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

1. On the effective date of these Orders, Respondent shall comply and maintain compliance with the WASP described in Finding 15, above.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of twenty-four thousand seven hundred eighty-one dollars ($24,781.00) 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 nineteen thousand eight hundred twenty-four dollars and eighty cents ($19,824.80) 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 the Respondent and the Facility. 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.

3. In lieu of paying the remaining four thousand nine hundred fifty-six dollars and twenty cents ($4,956.20) of the civil penalty identified in paragraph 2 above, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of four thousand nine hundred fifty-six dollars and twenty cents ($4,956.20) 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 four thousand nine hundred fifty-six dollars and twenty cents ($4,956.20). 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 check to 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.

4. Should Respondent fail to fund the Diesel Bus SEP in accordance with Order No. 3 above, Respondent shall pay Ohio EPA twenty-four thousand seven hundred eighty-one dollars ($24,781.00) of the civil penalty in accordance with the procedures in Order No. 1.

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
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Supervisor, DSIWM
2195 Front Street
Logan, Ohio 43138

and to:

Jefferson County General Health District
500 Market Street
Steubenville, Ohio 43052

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 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

Chris Korleski
Director

IT IS SO AGREED:

Apex Environmental LLC

Signature

11/11/08
Date

Anthony Rizzo
Printed or Typed Name

Chief Operating Officer
Title