



State of Ohio Environmental Protection Agency

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December 22, 2008

Kilbarger Construction, Inc.  
dba Athens-Hocking Reclamation Center  
17970 State Route 33  
Nelsonville, OH 45764

**CERTIFIED MAIL**

**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: Jeff Hurdley, CO, Legal  
Ed Gortner, CO, DSIWM  
Steve Rine, SEDO, DSIWM  
Athens City-County Health Department

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 22 2008

OFFICE OF THE DIRECTOR'S SECRETARY

In the Matter Of:

Kilbarger Construction, Inc.  
dba Athens-Hocking Reclamation Center  
P.O. Box 946  
Logan, Ohio 43138

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Director's Final Findings  
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 12-22-08

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).
5. On March 12, 2007, Ohio EPA's Southeast District Office, Division of Hazardous Waste Management ("SEDO-DHWM") copied the Division of Infectious Waste Management ("SEDO-DSIWM") on a notice of violation ("NOV") sent to Ray's Body Shop in Perry County regarding a facility inspection where the inspector observed hazardous waste disposed in a solid waste dumpster. Prior to the inspection, waste in the dumpster was routinely sent to the Facility for disposal.
6. In an NOV dated March 28, 2007, SEDO-DSIWM notified Respondent of violations of 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)(2) for failure to conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing documents; (E)(8)(c) for acceptance and disposal of hazardous waste from Ray's Body Shop; and (L) for failure to follow the pre-acceptance waste screening program procedures.
7. On March 29, 2007, SEDO-DHWM copied SEDO-DSIWM on an NOV sent to Gem Powder Coatings in Athens County regarding a facility inspection where the inspector observed hazardous waste disposed in a solid waste dumpster. Prior to the inspection, waste in the dumpster was routinely sent to the Facility for disposal.
8. In correspondence dated April 12, 2007, Respondent's attorney responded to Ohio EPA's March 28, 2007 NOV and stated that Respondent was not aware that it had accepted and disposed of hazardous waste from Ray's Body Shop.
9. In an NOV dated April 26, 2007, SEDO-DSIWM notified Respondent of violations of OAC Rule 3745-27-19(B)(1), (B)(2), (E)(8)(c), and (L) for acceptance and disposal of hazardous waste from Gem Powder Coatings at the Facility.
10. In an NOV to Respondent dated April 26, 2007, the Athens City-County Health Department ("Health Department") reiterated above-mentioned violations of OAC Rule 3745-27-19(B)(1), (B)(2), and (E)(8)(c), and (L) for acceptance and disposal of hazardous waste from Gem Powder Coatings at the Facility.

11. In an NOV to Respondent dated April 26, 2007, the Health Department reiterated above-mentioned violations of OAC Rule 3745-27-19(B)(1), (B)(2), and (E)(8)(c), and (L) for acceptance and disposal of hazardous waste from Ray's Body Shop at the Facility.
12. In correspondence dated May 7, 2007, Ohio EPA advised Respondent's attorney that in consideration of the two recent incidences of acceptance and disposal of hazardous waste at the Facility, Respondent should modify the Facility's PCB and Hazardous Waste Prevention and Detection Program to allow for improved screening of customers.
13. On August 30, 2007, the Health Department, accompanied by Ohio EPA, conducted an operational inspection of the Facility, and in an NOV dated September 4, 2007, the Health Department notified Respondent that violations of OAC Rule 3745-27-19(B)(1), (B)(2), (E)(8)(c), and (L) for acceptance and disposal of hazardous waste from Ray's Body Shop and Gem Powder Coatings remain unresolved.
14. On January 10, 2008, the Health Department, accompanied by Ohio EPA, conducted an operational inspection of the Facility, and in an NOV dated January 11, 2008, the Health Department notified Respondent that violations of OAC Rule 3745-27-19(B)(1), (B)(2), (E)(8)(c), and (L) for acceptance and disposal of hazardous waste from Ray's Body Shop and Gem Powder Coatings remain unresolved.
15. To date, the hazardous waste has not been removed from the Facility and violations of ORC Chapter 3734. and OAC Rule 3745-27-19 remain unresolved.

#### **V. ORDERS**

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

1. Not later than forty-five (45) days after the effective date of these Orders, Respondent shall require companies that haul waste to the Facility to provide all customers with a list of prohibited materials identified in OAC Rule 3745-27-23(O) as hazardous wastes, and provide a notice to those customers that only solid waste is permitted to be disposed of in the portable solid waste containers provided by Respondent.
2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$15,294.00 in settlement of Ohio EPA's claims for civil penalties for violations of the State of Ohio's solid waste laws, 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 \$15,294.00. 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 or 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:**



Chris Korleski, Director

**IT IS SO AGREED:**

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

Edward F. Kilbarger  
Signature

12-15-08  
Date