



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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122 S. Front Street  
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P.O. Box 1049  
Columbus, OH 43216-1049

September 21, 2001

**RE: Director's Final Findings & Orders  
Pine Hollow C&DD Landfill**

**CERTIFIED MAIL**

R.S.V. Inc.  
906 Backbone Ridge Road  
Steubenville, Ohio 43952

Mr. Robert S. Vukelic  
906 Backbone Ridge Road  
Steubenville, Ohio 43952

Dear Sir or Madam:

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

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the ground upon which the appeal is based. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director within three (3) days of filing with the Appeals Commission. An appeal may be filed at the following address:

Environmental Review Appeals Commission  
236 East Town Street  
Columbus, Ohio 43215

Sincerely,

Kimberly Reese  
Systems Management Unit  
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Sharon Gbur, CO, DSIWM  
Ohio EPA, SEDO, DSIWM  
Ann Wood, AGO, EES

Bob Taft, Governor  
Maureen O'Connor, Lieutenant Governor  
Christopher Jones, Director

OHIO E.P.A.

SEP 21 2001

ENTERED DIRECTOR'S JOURNAL

Date Issued: SEP 21 2001

Date Effective: SEP 21 2001

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

R.S.V. Inc.  
906 Backbone Ridge Road :  
Steubenville, Ohio 43952 :

Director's Final Findings  
and Orders

and

Mr. Robert S. Vukelic .  
906 Backbone Ridge Road :  
Steubenville, Ohio 43952 :

Respondents

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are hereby issued to RSV Inc. and Mr. Robert S. Vukelic (collectively the "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3704.03, 3714.12 and 3734.13 of the Ohio Revised Code ("ORC").

**II. PARTIES**

These Orders shall apply to and be binding upon the Respondents, their heirs, assigns and successors in interest bound under Ohio law. No changes in ownership relating to the Pine Hollow Construction and Demolition Debris Landfill located at 906 Backbone Ridge Road, Steubenville, Jefferson County, Ohio shall alter Respondents' responsibilities under these Orders. The Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapters 3704., 3714. and 3734. and the regulations 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.

By Zoran L. Clement Date 9-21-01

#### **IV. FINDINGS OF FACT**

The Director has determined the following findings of fact:

1. Respondents are the owners and/or operators of the Pine Hollow Construction and Demolition Debris Landfill ("Pine Hollow C&DD Landfill") located at 906 Backbone Ridge Road, Steubenville, Jefferson County, Ohio. The Pine Hollow C&DD Landfill is not a licensed construction and demolition debris ("CSDD") facility nor is the Pine Hollow C&DD Landfill a permitted and licensed solid waste disposal facility as required by Ohio's rules and is currently the subject of an enforcement action by the State of Ohio.
2. The Pine Hollow C&DD Landfill is approximately 10 acres in size and consists of C&DD waste and solid wastes that reach heights of approximately 80 feet. A natural gas line lies under the Pine Hollow C&DD Landfill and is oriented such that it traverses the landfill from the west to the east.
3. Since February of 2001, several surface fires have occurred at the Pine Hollow C&DD Landfill. Due to the occurrence of these surface fires, continued nuisance odors indicative of ongoing combustion and Ohio EPA observations of smoke venting from the Pine Hollow C&DD Landfill, Ohio EPA requested assistance from US EPA to investigate the source and extent of these fires, odors and observed smoke. In mid August 2001, US EPA through its contractor, Roy F. Weston Laboratories, Inc., conducted an aerial flyover of the Pine Hollow C&DD Landfill using infrared photography.
4. On September 6, 2001, Ohio EPA received the results of the aerial infrared flyover. The September 6, 2001 results, as interpreted by US EPA's contracted aerial infrared photographer, revealed a number of "hot spots" indicative of ongoing subsurface combustion of varying severity located in different parts of the landfill and further revealed that approximately 30% of the Pine Hollow C&DD Landfill is undergoing subsurface combustion.
5. On September 7, 2001, State of Ohio Attorney General Montgomery's Office acting on behalf of Ohio EPA, requested that Respondents voluntarily cease acceptance of material for disposal. To date, Respondents have not honored Ohio EPA's request to cease accepting material for disposal and Respondents continue to accept material for disposal.
6. OAC Rule 3745-400-11(B)(16) states, "The owner or operator shall not create a nuisance or health hazard from noise, dust, odors . . ." Respondents' failure to excavate and extinguish all fires at the Pine Hollow C&DD Landfill has created nuisance odors in violation of OAC Rule 3745-400-11(B)(16). Furthermore, ORC Section 3714.11(D) states, "This chapter does not abridge rights of action or remedies in equity, under common law, or as provided by statute or prevent the

state or any municipal corporation or person in the exercise of their rights in equity, under common law, or as provided by statute to suppress nuisances or to abate or prevent pollution.” The continued existence of fires and materials undergoing subsurface combustion at the Pine Hollow C&DD Landfill is inherently injurious to the public health, safety and the environment, and therefore constitutes a common law nuisance.

7. OAC Rule 3745-400-11 (H) states, “The owner or operator shall operate the facility in a manner that prevents fires.” Respondents have failed to operate the Pine Hollow C&DD Landfill in a manner that prevents fires.
8. OAC Rule 3745-400-11 (M) states, “The owner or operator shall have available at or near the facility, adequate fire control equipment, material, and services to control fire and explosion. The owner or operator shall act immediately to control or extinguish any fire.” Respondents have failed to act immediately to control or extinguish the material undergoing fire and subsurface combustion at the Pine Hollow C&DD Landfill.
9. OAC Rule 3745-400-04(C) states, “Construction and demolition debris disposal by means of open burning, as defined in Chapter 3745-19 of the Administrative Code, is permitted only as provided therein.” OAC Rule 3745-27-05(B) states, “Solid waste disposal by means of open burning, as defined in Chapter 3745-19 of the Regulations of the Ohio EPA, is permitted only as provided therein.” Respondents’ disposal of C&DD and solid wastes by means of open burning has not been permitted by Ohio EPA. By conducting and otherwise allowing unpermitted open burning of C&DD and solid waste, Respondents have failed to comply with ORC Chapter 3704., 3714., 3734., OAC Chapter 3745-19, OAC Rule 3745-400-04(C), and OAC Rule 3745-27-05(B).
10. OAC Rule 3745-400-04(D) states, “No person shall conduct or allow illegal disposal of construction and demolition debris, as defined in rule 3745-400-01 of the Administrative Code.” OAC Rule 3745-27-05(C) states, “No person shall conduct, permit, or allow open dumping [of solid waste].” Respondents’ have conducted and otherwise allowed illegal disposal of C&DD and solid wastes through unpermitted open burning. By conducting and otherwise allowing unpermitted open burning of C&DD and solid waste, Respondents have failed to comply with OAC Rule 3745-400-04(D) and OAC Rule 3745-27-05(C).
11. ORC Section 3714.13(A) states, “No person shall violate any section of this chapter.”
12. ORC Section 3714.13(B) states, “No person shall violate a rule adopted under this chapter.”
13. ORC Section 3714.13(C) states, " No person shall violate an order issued under this chapter.”

14. Based upon the foregoing, the Director of Ohio EPA has determined that the Pine Hollow C&DD Landfill poses substantial and imminent threat to human health, safety and the environment due to: 1) the unauthorized and uncontrolled releases of smoke contaminants to the air, 2) the potential risks posed by the landfill's deteriorating structural integrity as caused by the ongoing subsurface combustion and 3) exacerbation of the subsurface fire's ability to spread due to additional incoming combustible waste material entering the Pine Hollow C&DD Landfill.

### **V. ORDERS**

In order to protect human health, safety and the environment, the Respondents shall achieve compliance with ORC Chapters 3704., 3714., and 3734. and the regulations promulgated thereunder, according to the following schedule:

1. Effective immediately, Respondents shall cease accepting any construction and demolition debris ("C&DD") or solid waste at the Pine Hollow C&DD Landfill.
2. Effective immediately, Respondents shall notify all existing customers that the Pine Hollow C&DD Landfill has ceased accepting material for disposal.
3. Effective immediately, Respondents shall excavate and extinguish all fires that exist within the limits of the Pine Hollow C&DD Landfill including all material undergoing combustion beneath the landfill surface. Alternatively, Respondents may extinguish fires by means other than excavation through prior consultation with the State of Ohio Fire Marshall ("SOFM") and by implementing the approach recommended by the SOFM. Not later than 7 days after the effective date of these Orders, Respondents shall evaluate and submit to the Ohio EPA a report demonstrating the Respondents' successful compliance with this Order.
4. Respondents' actions to extinguish any and all fires shall be conducted in a manner that minimizes risk to human health, safety, and the environment.
5. Effective immediately, Respondents shall take all appropriate measures to prevent unauthorized access by the general public.

### **VI. TERMINATION AND SATISFACTION**

The Respondents' obligations under these Orders shall terminate when the Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be signed and submitted by the Respondents. The certification shall make the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

#### **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 signatory to these Orders, for any liability arising out of or relating to the Pine Hollow C&DD Landfill.

#### **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. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Pine Hollow C&DD Landfill. Ohio EPA reserves all rights and privileges except as specified herein.

#### **IX. NOTICE**

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA 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, OH 43138

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

#### **X. RESERVATION OF RIGHTS**

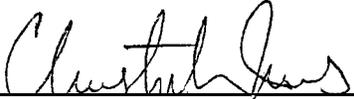
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking civil penalties against the Respondents for noncompliance with these Orders or for violations of the State's environmental laws.

Nothing contained herein shall restrict Ohio EPA from taking administrative, legal or equitable action, as deemed appropriate and necessary, against the Respondents for violations of the State's environmental laws and regulations which have occurred at the

Respondents' property, including seeking civil penalties for all violations including those violations addressed in these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondents to perform additional activities pursuant to ORC Chapters 3704., 3714., 3734. or any other applicable law in the future. Nothing herein shall restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**IT IS SO ORDERED:**



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Christopher Jones, Director