

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

2010 JAN 12 A 9:47

In the Matter of:

Pike Sanitation, Inc.	:	<u>Director's Final Findings</u>
d.b.a. Pike Sanitation Landfill	:	<u>and Orders</u>
11775 State Route 220 East	:	
Waverly, Ohio 45690	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Pike Sanitation, Inc., d.b.a. Pike Sanitation Landfill ("Respondent") pursuant to the authority vested in the Director of Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 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 or of the facility (as identified hereafter) 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 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a sanitary landfill located at 11775 State Route 220 East, Waverly, Pike County, Ohio. Respondent's facility is a "Title V source," as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(PP), and is subject to the requirements of OAC Chapter 3745-77.

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.

 Date: 1-12-11

2. OAC Rule 3745-77-02(A) states, in part, that the owner or operator of a Title V source shall not operate such source after the date that a timely and complete Title V permit application is required, unless such an application has been timely submitted or the source is in compliance with a Title V permit.

3. OAC Rule 3745-77-04(E) requires that a Title V permit renewal application be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

4. OAC Rule 3745-77-06(A) states, in part, that if the owner or operator of a Title V source submits a timely and complete application for permit renewal, the failure to have a Title V permit is not a violation of this Chapter until the Director takes final action on the application.

5. ORC § 3704.05(C) states, in part, that no person who is a holder of a permit issued under ORC § 3704.03(F) or (G) shall violate any of its terms or conditions.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 37-77 was adopted by the Director pursuant to ORC Chapter 3704.

7. ORC § 3704.05(J)(2) states, in part, that no person shall violate any filing requirement of the Title V permit program.

8. ORC § 3704.05(K) states, in part, that no person shall operate a source that is required to obtain a Title V permit unless a Title V permit has been issued authorizing operation of the source or unless a complete and timely application for the issuance, renewal, or modification of a Title V permit for the source has been submitted to the Director.

9. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than \$25,000 for each day of each violation.

10. On May 20, 2003, Ohio EPA issued a final Title V permit for Respondent's facility (Ohio EPA facility identification number 06-66-00-0003). The permit's expiration date of May 20, 2008, was given in the Final Issuance cover page of the permit, and the cover page included a statement that Title V permit renewal applications are to be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

11. Respondent failed to submit an application to renew its Title V permit to Ohio EPA at least six months prior to the permit expiration date of May 20, 2008 (i.e., by November 22, 2007), in violation of OAC Rule 3745-77-04(E) and ORC § 3704.05(G) and (J)(2). In addition, Respondent continued to operate a Title V source after May 20, 2008, without a Title V permit or a timely filed and complete renewal application, in violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K).

12. Respondent submitted a complete Title V permit renewal application to Ohio EPA on December 14, 2007, approximately 22 days after the filing deadline.

13. By letter dated May 26, 2010, Ohio EPA notified Respondent of the violations referenced in Finding No. 11 of these Orders. The May 26, 2010 letter also reiterated that Respondent's failure to submit a complete and timely application resulted in the loss of the "application shield" provided by OAC Rule 3745-77-06(A). Therefore, the continued operation of the Title V source after the expiration date of the Title V permit, without a valid Title V renewal permit being issued by the Director, would be a violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K). Lastly, the May 26, 2010 letter notified Respondent that its December 14, 2007 submittal of the Title V permit renewal application, less than 180 days prior to the Title V permit expiration date, did not reinstate the "application shield" provided by OAC Rule 3745-77-06(A) for this facility.

14. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall continue to comply with all terms and conditions of its Title V permit, as issued on May 20, 2003, until the Director takes final action on the application submitted on December 14, 2007.

2. Respondent shall pay the amount of two thousand dollars (\$2,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

3. A copy of the above check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
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 Air Pollution Control 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 the 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.

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
2195 Front Street
Logan, Ohio 43138
Attn: Bruce Weinberg

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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 the 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

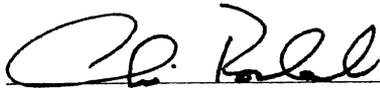
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski
Director

Date 1/5/11

AGREED:

Pike Sanitation, Inc., d.b.a. Pike Sanitation Landfill



Signature

Date 01-03-11

MICHAEL V. NIETANKE

Printed or Typed Name

PIKE SANITATION, INC. PRESIDENT

Title