



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Interim Director

CERTIFIED

January 28, 2014

City of Brooklyn
7619 Memphis Avenue
Brooklyn, OH 44144

RE: Brooklyn Landfill
Director's Final Findings and Orders
DFFO
Municipal Solid Waste Landfill
Cuyahoga County
MSWL018802

Dear Sir or Madam:

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

Enclosed is an invoice for the total penalty amount of \$29,946.00 required by the orders. The penalty payment shall be made by official check payable to "Treasurer, State of Ohio."

If you have any questions, please contact Robin Nichols at (614) 644-3037.

Sincerely,

A handwritten signature in cursive script that reads "Georgia Frakes".

Georgia Frakes, Management Analyst
Division of Materials & Waste Management

Enclosure

ec: Carl Mussenden, DMWM, CO
Kelly Jeter, DMWM, CO
Robin Nichols, Legal
Judy Bowman, DMWM, NEDO
Lynn Sowers, DMWM, NEDO
Josh Adams, DMWM, NEDO
Dane Tussel, Cuyahoga County Health Department

OHIO E.P.A.

JAN 28 2014

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

City Of Brooklyn
7619 Memphis Avenue
Brooklyn, Ohio

:
:
:

Director's Final Findings
and Orders

Respondent

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

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: Donna Cassler Date: 1-28-14

PREAMBLE

The parties having engaged in settlement discussions and desiring to avoid litigating disputed claims, have reached an agreement pursuant to Ohio Revised Code ("ORC") 3745.01 to resolve said claims through these Director's Final Findings and Orders ("Orders").

I. JURISDICTION

These Orders are issued to the City of Brooklyn ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under 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 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 Brooklyn Landfill ("Facility") is located at 9400 Memphis Avenue, Brooklyn, Cuyahoga County, Ohio.
2. Respondent is the "owner" of the Facility and "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rules 3745-27-01(O)(7) and (O)(5), respectively.

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)(23).
4. The Respondent is a person as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
5. Respondent's Permit-to-Install ("PTI") number 02-4542 was approved by the Director of Ohio EPA on September 6, 1990.
6. OAC Rule 3745-27-02(A) states in pertinent part, "no person shall . . . modify a solid waste facility . . . without obtaining a permit to install issued by the director."
7. OAC Rule 3745-27-19(B)(2) states in pertinent part, "The owner or operator shall conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing document, including permit to install, a plan approval, an operational report, an approved closure plan, an alteration concurred with in writing by Ohio EPA, or any authorizing document listed in paragraph (l) of rule 3745-27-09 of the Administrative Code[.]"
8. The Respondent submitted its 2008, 2009 and 2010 Facility Annual Operational Reports ("[YEAR] Annual Report") on April 9, 2009, March 31, 2010, and April 1, 2011, respectively.
9. OAC Rule 3745-27-02(C)(1)(b) states in pertinent part, "For the purposes of this rule, "modify" or "modification" means...(a) substantial horizontal or vertical increase in the limits of waste placement."
10. By letters dated January 12, 2010 and June 16, 2011, Ohio EPA notified the Respondent that, based upon the Agency's review of Respondent's annual reports, solid waste is located beyond the limits of waste placement approved in PTI # 02-4542. Specifically, the City disposed of solid waste horizontally beyond the approved limits of waste placement along the southeast corner and vertically in several portions of the Facility. The waste disposed beyond the approved limits of waste placement constitutes a modification of the Facility, as that term is defined in OAC Rule 3745-27-02(C). Respondent's disposal of material beyond the approved limits of waste placement is in violation of OAC Rule 3745-27-02(A) for modifying a solid waste facility without obtaining a permit to install issued by the director, and OAC Rule 3745-27-19(B)(2) for not conducting all construction and operation at the a sanitary landfill facility in strict compliance with PTI # 02-4542.

11. By letter dated June 14, 2010, Respondent responded to Ohio EPA's January 12, 2010 letter, including references to correspondence from Ohio EPA discussing the historical placement of waste materials in the southeast corner of the landfill. Respondent's response also noted that a review of Respondent's Annual Reports demonstrated that the reports included drawings that depicted the limits of waste placement as including the southeast corner of the site.
12. Respondent responded to Ohio EPA's June 16, 2011 letter on June 30, 2011, July 27, 2011, and March 8, 2012, and met with Ohio EPA on August 12, 2011 and May 28, 2013 to discuss the permitted limits of waste placement.
13. OAC Rule 3745-27-19(M)(1) states in pertinent part,

"The owner or operator of a sanitary landfill facility shall submit an 'annual operational report' to the appropriate Ohio EPA district office and approved health department not later than the first day of April of each year. The 'Annual Operational Report' shall include, at a minimum, the following information summarizing the previous calendar year's operations: (1) A topographic map of all units of the sanitary landfill facility, certified by a professional skilled in the appropriate disciplines, with updated contour lines on the plan drawing containing information specified in rule 3745-27-06 of the Administrative Code."
14. The 2009 Annual Report submitted by Respondent did not include a topographic map as required by OAC Rule 3745-27-19(M)(1). Respondent states at the bottom of pages 17 and 18 of its 2009 Annual Report that "[i]ssues relating to remaining volume and remaining airspace of the facility will be resolved pending discussions between the City of Brooklyn and the Ohio EPA."
15. The 2010 Annual Report submitted by Respondent did contain a topographic map, but that map did not contain updated contour lines as required by OAC Rule 3745-27-19(M)(1). Respondent states on page 20 of the 2010 Annual Report:

The topographic map presented is the most recent survey completed in 2008. Due to the issues between the Ohio EPA and the City of Brooklyn Landfill concerning the January 12, 2010 NOV, no additional survey has been completed of the facility. Pending resolution of the NOV, the topographic map and grades may be revised.
16. By letter dated June 16, 2011, Ohio EPA notified the Respondent that it is in violation of OAC Rule 3745-27-19(M)(1) for failing to submit a topographic map of all units of the sanitary landfill facility, certified by a professional skilled in the

appropriate disciplines, with updated contour lines on the plan drawing containing information specified in rule 3745-27-06 of the Administrative Code.

17. OAC Rule 3745-27-19(M)(3) states:

“The owner or operator of a sanitary landfill facility shall submit an ‘annual operational report’ to the appropriate Ohio EPA district office and approved health department not later than the first day of April of each year. The “Annual Operational Report” shall include, at a minimum, the following information summarizing the previous calendar year’s operations: An estimate of the remaining sanitary landfill facility life, in years, and in terms of the remaining volume of the sanitary landfill facility to be filled, in cubic yards.”

18. OAC Rule 3745-27-19(K)(3) states, “The owner or operator shall visually or physically inspect the collection pipe network of the leachate management system after placement of the initial lift of waste to ensure that crushing has not occurred and shall inspect the collection pipe network annually thereafter to ensure that clogging has not occurred.”
19. The Respondent identified on page 16 of its 2010 annual report a volume and facility life information determined using calculations from the 2008 Annual Report, not the previous calendar year’s (2010) operations. The Respondent is in violation of OAC Rule 3745-27-19(M)(3) for failing to estimate the remaining sanitary landfill facility life, in years, and in terms of the remaining volume of the sanitary landfill facility to be filled, in cubic yards based on the previous calendar year’s operations.
20. By letter dated June 16, 2011, Ohio EPA notified the Respondent that it is in violation of OAC Rule 3745-27-19(M)(3) for failing to verify in the 2010 Annual Report that the leachate management system is operating in accordance with the rule and in violation of OAC Rule 3745-27-19(K)(3) for not conducting an annual inspection of the collection pipe network.
21. By letters dated June 30, 2011 and July 27, 2011 and in a meeting held on August 12, 2011, Respondent responded to the allegations set forth in the June 16, 2011 letter from Ohio EPA.
22. OAC Rule 3745-27-19(M)(6) states:

The owner or operator of a sanitary landfill facility shall submit an “annual operational report” to the appropriate Ohio EPA district office and approved health department not later than the first day of April of each year. The “Annual Operational Report” shall include, at a minimum, the following information summarizing the previous

calendar year's operations: The most recent updated closure cost estimate, post-closure care cost estimate, and, if applicable, corrective measures cost estimate, adjusted for inflation and for any change in closure cost estimate, post-closure care cost estimate, or corrective measures cost estimate required by rules 3745-27-15, 3745-27-16, and 3745-27-18 of the Administrative Code.

23. Section 18 of the 2010 Annual Report states that it contains the closure and post-closure cost estimate based on the 2001 estimate adjusted each year for inflation. The annual report does not contain the itemized cost estimate for review by Ohio EPA to determine compliance with the current closure and post-closure requirements and costs.
24. By letter dated June 16, 2011, Ohio EPA notified the Respondent that it is in violation of OAC Rule 3745-27-19(M)(6) for failing to submit an itemized cost estimate for review by Ohio EPA to determine compliance with the current closure and post-closure requirements and costs.
25. OAC Rule 3745-27-19(N) states in pertinent part. "Upon every tenth anniversary of the effective date of the initial permit to install... the owner or operator shall submit to Ohio EPA an analysis demonstrating that the design of the unconstructed portions of the sanitary landfill facility continues to be consistent with the design standards established in the current version of rule 3745-27-08 of the Administrative Code(.)"
26. On February 1, 2002, the Respondent submitted the required analysis; and, on March 7, 2007, the Respondent submitted a final closure/post-closure plan to update the Facility's design to meet the current version of OAC Rule 3745-27-08. During a meeting held on December 14, 2009, Ohio EPA informed the Respondent that the revised final closure/post-closure plan included an expansion of the limits of solid waste placement beyond those approved in PTI # 02-4542, and therefore, could not be approved.

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 thirty (30) days after the effective date of these Orders, the Respondent shall submit to Ohio EPA:
 - A. a topographic map of all units of the sanitary landfill facility, certified by a professional skilled in the appropriate disciplines, with updated contour lines on the plan drawing containing information specified in rule 3745-27-19(M)(1)

of the Administrative Code, including, but not limited to, the current contours of solid waste placement and the permitted limits identified in PTI #02-4542.

- B. a comparison of the actual vertical and horizontal limits of emplaced waste to the vertical and horizontal limits of waste placement authorized PTI #02-4542. This comparison shall include a topographic map which delineates the areal extent of emplaced waste that exceeds approved limits. In addition, the topographic map shall contain notes that indicate the following information for waste exceeding authorized limits of waste placement: the maximum estimated volume, the maximum depth, and the average depth.
2. Not later than sixty (60) days after the effective date of these Orders, Respondent shall submit to Ohio EPA, for written concurrence, a plan describing how Respondent will manage solid waste located outside the permitted limits. The plan shall utilize only one or more of the following management options:
 - A. Removal and appropriate disposal of solid waste placed outside of permitted limits;
 - B. Demonstration that the placement of the solid waste is authorized under PTI #02-4542;
 - C. Demonstration that the placement of the solid waste is not inconsistent with RCRA Subtitle D.
 3. Not later than sixty (60) days after Ohio EPA's concurrence with the plan submitted in accordance with Order #2, Respondent shall submit to Ohio EPA a revised final closure/post-closure plan, in compliance with OAC Rule 3745-27-11 except that the plan shall provide for a final cap that is protective of public health, safety, and the environment and, at a minimum, is designed and constructed in such a manner as to meet the following requirements:
 - A. Minimize the infiltration of surface water and the generation of leachate;
 - B. Controls surface water;
 - C. Serve as a barrier to leachate outbreaks;
 - D. Have a maximum slope based on a slope stability analysis;
 - E. Have at least a five percent grade;
 - F. Provide protection for all cap system components from the effects of the formation of landfill gas;

- G. Control landfill gas migration;
 - H. Minimizes erosion;
 - I. Supports a dense vegetative cover.
4. Not later than sixty (60) days after Ohio EPA's concurrence of the plan submitted in accordance with Order #2, the Respondent shall submit to Ohio EPA an itemized closure cost estimate and an itemized post-closure cost estimate. The cost for closure shall include the cost of managing waste that is disposed outside of the permitted limits of waste placement in accordance with Order #2.
 5. Not later than ninety (90) days after the submittal of the closure/post-closure plan submitted in accordance with Order #3 or April 1, 2015, Respondent shall commence closure activities in accordance with the closure/post-closure plan.
 6. Respondent shall complete closure of the Facility in accordance with these Orders no later than December 31, 2015.
 7. Not later than sixty (60) days after the effective date of these Orders, the Respondent shall inspect and demonstrate in writing to Ohio EPA that the collection pipe network of the leachate management system to ensure that crushing has not occurred; and shall inspect and demonstrate in writing to Ohio EPA that the collection pipe network annually thereafter that clogging has not occurred, in accordance with OAC Rule 3745-27-19(K)(3).
 8. Not later than January 31, 2016, the Respondent shall pay the amount of twenty-nine thousand nine hundred forty-six dollars (\$29,946.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3734. Not later than January 31, 2016, payment to Ohio EPA shall be made by official check made payable to "Treasurer, State of Ohio" for twenty-nine thousand nine hundred forty-six dollars (\$29,946.00). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent to the following address:

Ohio EPA
Office of Fiscal Administration
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

Materials and 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: "The City certifies that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by the Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the principal executive officer, the ranking elected official, or other duly authorized employee.

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
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087

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. Ohio EPA specifically reserves all rights, privileges and causes of action to require enhancement of the cap system, repair of the cap system, or the performance of other measures, as appropriate, with regard to the following conditions occurring at, arising from, or related to the Facility:

1. A gas threshold set forth in OAC Rule 3745-27-12(E)(5) is reached or detected;
2. Engineered components such as the slopes at the Facility fail;
3. Waste derived constituents from the Facility are detected in ground water;
4. A nuisance or emergency situation related to the Facility occurs or is threatened to occur.

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 unless one or more of the four conditions listed in Section XI of these Orders occurs.

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



Craig W. Butler
Interim Director

IT IS SO AGREED:

City of Brooklyn



Signature

1-14-14

Date

RICHARD H. BALBIER

Printed or Typed Name

MAYOR

Title

Ohio EPA Invoice/Receipt

Date Printed: January 28, 2014

Revenue ID: 970352

Please include this Revenue ID with all correspondence.

Place ID: 8364

Information: City of Brooklyn Landfill
9400 Memphis Ave
Brooklyn, OH 44144-

Due Date: January 31, 2016

Amount Due: \$29,946.00

Effective Date: January 28, 2014

Revenue Description: DSIWM- Findings and Orders/Consent Orders

Program Name: Solid Waste Programs

Reason: Penalty for SW to be deposited into Environmental Remediation Fund.

For some Revenues, Interest and/or Penalties may be charged for late payment.

Next Interest Date (if applicable):

Next Penalty Date (if applicable):

Remittance Advice

Detach Here - Please Return This Portion With Your Payment

Place ID: 8364

Information: City of Brooklyn Landfill
9400 Memphis Ave
Brooklyn, OH 44144-

Due Date: Jan 31, 2016

Amount Due: \$29,946.00

Secondary Type/Id: SOLWA / 18-00-13

Revenue Type: DSIFO

Amount Enclosed: \$ _____

Please write this number on your check. Revenue ID: 970352

Make check or money order payable to "Treasurer, State of Ohio"

Remit to: Ohio Environmental Protection Agency - OFA
Department L-2711
Columbus, OH 43260-2711

For Ohio EPA use only

Check ID: _____

Check Date: _____

Check Number: _____

Check Amount: \$ _____

		2994600	DSIFO	970352
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