

Date Effective: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

City of Wapakoneta	:	<u>Director's Final Findings</u>
City of Wapakoneta Landfill :		<u>and Orders</u>
102 Perry Street	:	
Wapakoneta, Ohio 45875	:	

Respondent

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the City of Wapakoneta ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 3734.13.

II. PARTIES

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 OF FACT

The Director has determined the following findings:

1. Respondent is the owner, former operator, and former license holder of the City of Wapakoneta Landfill ("Facility") located at 510 North Water Street, Wapakoneta,

Auglaize County, Ohio.

2. The Facility is a "sanitary landfill facility" as defined under Ohio Administrative Code (OAC) Rule 3745-27-01(C)(4) and until 1993, was authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(B)(43).
3. Respondent operated the Facility pursuant to detail plans filed with the Ohio Department of Health on February 20, 1969. As required by ORC Section 3734.05, Respondent submitted to Ohio EPA a Permit to Install ("PTI") application on March 3, 1988.
4. On December 22, 1989, the Director of Ohio EPA issued to Respondent a proposed order denying Respondent's March 3, 1988 PTI. On January 19, 1990, Respondent filed a request for an adjudication hearing with the Ohio EPA Hearing Examiner. On December 14, 1992, Ohio EPA and the Respondent filed a Stipulation and Settlement Agreement in this matter (Case Number 90-SO-005.) In accordance with the December 14, 1992 Stipulation and Settlement Agreement, the Director of Ohio EPA issued Director's Final Findings and Orders on May 19, 1993, which required, *inter alia*, that the:
 - A. Facility cease acceptance of solid waste acceptance by October 8, 1993.
 - B. Respondent to submit a "Final Closure/Post-Closure Plan" before June 24, 1993.
 - C. Respondent to complete final closure activities as per the closure plan by October 30, 1994.
 - D. Facility cease acceptance of all waste, including construction and demolition debris on or before October 30, 1994 or upon reaching final elevations in areas identified in the approved closure plan, whichever comes first.
 - E. Respondent shall submit to the Director and implement a ground water monitoring program plan in accordance with OAC Rule 3745-27-10 within 120 days.
 - F. Respondent shall submit to the Director and implement a ground water quality assessment plan in accordance with OAC Rules 3745-27-10(E) and (F) within 120 days.
5. On November 29, 1996, the Director of Ohio EPA issued Final Findings and Orders to the Respondent pursuant to the Director's authority found in OAC Rule 3745-27-12(O). The November 29, 1996 Directors Final Findings and Orders required, *inter alia*, that the Respondent must comply with the following:
 - A. As soon as practical, but not later than 60 days after the effective date of the November 29, 1996 Orders, Respondent shall perform any additional explosive gas migration assessment activities to determine an appropriate

- remediation plan.
- B. As soon as practical, but not later than 120 days after the effective date of the November 29, 1996 Orders, Respondent shall design a remediation plan which ensures that the formation and migration of explosive gas from the Facility does not constitute a threat to human health safety and the environment.
 - C. As soon as practical, but not later than 180 days after the effective date of the November 29, 1996 Orders, Respondent shall implement the explosive gas remediation plan.
 - D. Respondent shall weekly monitor probes MP-1, PBS-5, PBS-6, PBS-6A, PBS-9, PBS-12, and any other probes exceeding the lower explosive limit ("LEL") during monthly monitoring. This monitoring shall continue weekly until the November 29, 1996 Orders terminate in accordance with Section VI.
 - E. Within 150 days after the explosive gas remediation plan has been implemented, Respondent shall submit a report that includes 4 consecutive months of weekly monitoring results from the affected probes to Ohio EPA and shall continue monitoring in accordance with Respondent's January 11, 1991 approved explosive gas monitoring plan.
 - F. Respondent shall design and implement another explosive gas remediation system should the report indicate the system is not meeting its objectives.
6. In correspondence dated April 30, 1992 and May 17, 1993, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-09, as that rule was effective March 1, 1990:
- A. Respondent violated OAC Rule 3745-27-09(F) by failing to implement measures to protect intermediate cover from erosion.
 - B. Respondent violated OAC Rule 3745-27-09(N) by failing to undertake actions as necessary to prevent and control ponding.
 - C. Respondent violated OAC Rule 3745-27-09(O) by failing to repair leachate outbreaks.
 - D. Respondent violated OAC Rule 3745-27-09(X) by failing to submit an annual report by April 1.
7. In correspondence dated December 18, 1995, June 26, 1996, July 15, 1996, October 15, 1996, February 25, 1997, June 13, 1997, November 25, 1997, May 7, 1998, and November 5, 1998, the Ohio EPA and/or the Auglaize County Health Department notified Respondent of the following violations of OAC Rule 3745-27-19, as that rule was effective on June 1, 1994:
- A. Respondent violated OAC Rule 3745-27-19(E)(26) by failing to maintain the integrity of the engineered components and repair any damaged components.
 - B. Respondent violated OAC Rules 3745-27-19(K)(1) by failing to contain and properly manage the leachate and take action to minimize, control or eliminate the conditions which contribute to the production of leachate.

- C. Respondent violated OAC Rule 3745-27-19(M) by failing to submit the annual operational report before April 1.
8. In correspondence dated October 7, 1994, April 7, 1995, and January 2, 1997, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-12, as that rule was effective on June 1, 1994:
 - A. Respondent violated OAC Rule 3745-27-12(A) by failing to conduct explosive gas sampling on a monthly basis.
 - B. Respondent violated OAC Rule 3745-27-12(K)(1) by failing to sample in accordance with the contingency plan.
 - C. Respondent violated OAC Rule 3745-27-12(I) by failing to monitor in the month of installation of the monitoring system and by failing to submit monitoring results to Ohio EPA within fifteen days of the date of sampling.
9. In correspondence dated July 24, 1998, August 12, 1998, November 5, 1998, December 14, 1998, April 13, 1999, February 23, 2000, September 26, 2000, February 13, 2001, April 18, 2001, June 4, 2001, June 8, 2001, July 26, 2001, and December 24, 2001, Ohio EPA and/or the Auglaize County Health Department notified Respondent of the following violations of OAC Rule 3745-27-14, as that rule was effective on June 1, 1994:
 - A. Respondent violated OAC Rule 3745-27-14(A)(2) by failing to maintain the effectiveness and integrity of the cap system, including making repairs to the cap system as necessary to correct the effects of settling, erosion, subsidence, leachate outbreaks or other events.
 - B. Respondent violated OAC Rule 3745-27-12(A)(4) by failing to fulfill all monitoring and reporting requirements in accordance with OAC Rule 3745-27-12.
10. In correspondence dated August 6, 1996, October 28, 1996, January 2, 1997, March 4, 1997, August 6, 1997, May 7, 1998, July 24, 1998, July 15, 1999, December 16, 1999, January 13, 2000, October 4, 2000, and November 14, 2001, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-10 as that rule was effective March 1, 1990:
 - A. Respondent violated OAC Rule 3745-27-10(A) by failing to implement the Facility's ground water sampling and analysis plan.
 - B. Respondent violated OAC Rule 3745-27-10(B)(5) by failing to submit the Facility's annual report with ground water surface elevations included.
 - C. Respondent violated OAC Rule 3745-27-10(C)(1) by failing to implement a consistent sampling and analysis plan protective of human health safety and the environment. Specifically, Respondent failed to conduct sampling procedures in accordance with its ground water sampling and analysis plan.
 - D. Respondent violated OAC Rule 3745-27-10(D)(1) by failing to determine the

- chemical concentrations of all the parameters listed in OAC Rule 3745-27-10(D)(1)(a)-(gg).
- E. Respondent violated OAC Rule 3745-27-10(D)(4) by failing to sample at least semi annually after the first year for the specified parameters listed in OAC Rule 3745-27-10(D)(1)(b)-(e) and (gg).
 - F. Respondent violated OAC Rule 3745-27-10(D)(5) by failing to sample at least annually after the first year for the specified parameters listed in OAC Rule 3745-27-10(D)(1)(f)-(ff).
 - G. Respondent violated OAC Rule 3745-27-10(D)(8) by failing to add monitoring well SW-7 to the Facility's ground water quality assessment plan as an affected monitoring well.
 - H. Respondent violated OAC Rule 3745-27-10(E)(1) by failing to submit the Facility's ground water quality assessment plan.
 - I. Respondent violated OAC Rule 3745-27-10(E)(4) by failing to implement the Facility's ground water quality assessment plan.
11. In correspondence dated November 24, 1997, July 24, 1998, February 6, 2001, June 4, 2001, June 8, 2001, and July 26, 2001, Ohio EPA notified Respondent of the following violations of the November 29, 1996 Director's Final Findings and Orders. Specifically, Respondent failed to comply with the following requirements of the November 29, 1996 Director's Final Findings and Orders:
- A. Respondent violated Order No. 3 by failing to implement an explosive gas remediation plan.
 - B. Respondent violated Order No. 4 by failing to weekly monitor affected explosive gas monitoring wells.
 - C. Respondent violated Order No. 5 by failing to submit to the Director four months of weekly explosive gas monitoring sample results.
12. On December 20, 1999, Ohio EPA issued an OAC Rule 3745-27-13 authorization to Respondent for the installation of Leachate Extraction Wells 5 and 6.
13. In correspondence dated June 29, 2000, Ohio EPA notified Respondent of the deficiencies to the July 10, 1998 addendum to the August 5, 1997 closure certification report. To date, Respondent has not addressed any of the deficiencies in this letter and the closure certification report has not been approved by Ohio EPA.
14. In correspondence dated February 13, 2001 and April 18, 2001, Ohio EPA notified Respondent of its failure to comply with condition 2 of Director's December 20, 1999 Rule 13 Authorization. Condition 2 required that "not later than sixty (60) days after completion of the activities approved under this authorization, a certification report shall be submitted to Ohio EPA..." Since Respondent did not submit the report to Ohio EPA, then they were cited for a violation of OAC Rule 3745-27-13 for failing to comply with the Director's Rule 13 Authorization.

15. On April 4, 2002, Ohio EPA mailed proposed consensual Director's Final Findings and Orders to Respondent, requesting that they contact Ohio EPA within fourteen days. Respondent contacted Ohio EPA, and, after multiple meetings between Respondent and Ohio EPA, an agreement has not been reached.
16. In correspondence dated April 17, 2002, Ohio EPA notified Respondent of its violation of OAC Rule 3745-27-14(A)(2) for not repairing a leachate outbreak near LEW-5. Respondent was also notified of its violation of condition number 2 of the January 17, 2002, OAC Rule 3745-27-13 directors authorization for not pumping LEW-8 for the entire month of March 2002.
17. In correspondence dated September 5, 2002, October 3, 2002, and March 28, 2003, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-10, as that rule was effective March 1, 1990:
 - A. Respondent violated OAC Rule 3745-27-10(C)(1) by not providing an accurate representation of ground water quality at the background and downgradient wells and by not providing an adequate ground water detection monitoring program.
 - B. Respondent violated OAC Rule 3745-27-10(C)(3) by not establishing an appropriate background well for the significant saturated zone wells.
 - C. Respondent violated OAC Rule 3745-27-10(C)(5) by not utilizing the required Practical Quantitation Limits ("PQL").
 - D. Respondent violated OAC Rule 3745-27-10(B)(3)(e) by not operating and maintaining wells SW-3 and AW-4 to perform to design specifications.
 - E. Respondent violated OAC Rule 3745-27-10(E)(4) by not implementing an adequate ground water assessment plan.
 - F. Respondent violated OAC Rule 3745-27-10(C)(7) by not performing a two-tailed statistical test for pH.
 - G. Respondent violated OAC Rule 3745-27-10(E)(2)(c) by not submitting analytical results in the time specified by this rule.
 - H. Respondent violated OAC Rules 3745-27-10(E)(2)(a) and (b) by not providing provisions for sampling monitoring wells in the appropriate time frame.
 - I. Respondent violated OAC Rules 3745-27-10(E)(3)(b) and (b)(iii) by not providing in the assessment plan, a summary of the statistical analyses applied to the data and an adequate description of the detection monitoring plan.
 - J. Respondent violated OAC Rule 3745-27-10(E)(3)(d) by not including the required information in the assessment plan.
 - K. Respondent violated OAC Rule 3745-27-10(E)(3)(e) by not providing a discussion on the planned use of statistical data evaluation and the planned use of previously gathered information.

18. In correspondence dated October 8, 2002, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-10 as that rule was effective March 1, 1990:
 - A. Respondent violated OAC Rule 3745-27-10(E)(2)(c) by not submitting analytical results in the time specified by this rule.
 - B. Respondent violated OAC Rule 3745-27-10(E)(4)(a) by not providing a determination of the rate and extent of leachate or leachate-derived constituents in the ground water.

19. In correspondence dated June 10, 2003, Ohio EPA notified Respondent of the following violations of OAC Rule 3745-27-10 as that rule was effective March 1, 1990:
 - A. Respondent violated OAC Rule 3745-27-10(B)(3)(e) and OAC Rule 3745-27-10(C)(1) by not maintaining monitoring wells and by not providing an adequate ground water detection monitoring system.
 - B. Respondent violated OAC Rule 3745-27-10(C)(2) by not providing a determination of ground water flow direction.

V. ORDERS

The Respondent shall achieve compliance with ORC Chapter 3734, the rules promulgated thereunder, and the November 29, 1996 DFFOs according to the following compliance schedule:

Explosive Gas Management

1. Immediately upon the effective date of these Orders, Respondent shall implement the remediation plan submitted by Respondent and received by Ohio EPA on July 11, 2003, and continue operation of the explosive gas remediation system until all explosive gas monitoring probes are demonstrated to be below the Lower Explosive Limit ("LEL"). Respondent may suspend operation of the explosive gas remediation system only upon advance written concurrence from the Director of Ohio EPA.
2. Respondent shall demonstrate the effectiveness and necessity of the remediation system operation through weekly monitoring of MP-1, MP-7, MP-8, and DMV-9 and any other probes that exceed the LEL during monthly monitoring of the explosive gas system. Respondent shall collect 4 weeks of monitoring data and shall compile and forward 4 weeks of data to Ohio EPA-NWDO on a monthly basis for a duration of six months.
3. Respondent shall continue to maintain the integrity of the explosive gas remediation system such that it may operate in the event any weekly gas probe sampling and

analysis indicate explosive gas concentrations exceed the LEL.

4. If the six months of data submitted in accordance with Order No. 2 does not prove to the satisfaction of Ohio EPA that the remediation system has been successful, then Ohio EPA will notify the Respondent. Within 180 days of Ohio EPA's notification, the Respondent shall design and implement an active gas extraction system effective in reducing the explosive gas levels in the perimeter probes below the Explosive Gas Threshold Limit. Upon implementation of the active gas system, sampling and maintenance shall be completed in accordance with Order Nos. 2 and 3 and sampling shall continue in accordance with Order 2 until termination of these orders is achieved in compliance with Section VI of these Orders.

Leachate Management

5. As often as necessary, Respondent shall immediately repair leachate outbreaks in accordance with the Facility's closure/post closure care plan and the applicable requirements of OAC Chapter 3745-27.
6. Within sixty (60) days after the effective date of these Orders, Respondent shall prepare and submit to Ohio EPA a leachate management plan that is not inconsistent with any applicable state or federal law.
7. Ohio EPA shall review the leachate management plan and, in the event that Ohio EPA determines that the leachate management plan as submitted is deficient, Ohio EPA shall provide Respondent with a written notice of deficiencies. Respondent shall, within thirty (30) days after receipt of the notice of deficiencies, revise the leachate management plan to address the deficiencies and submit the revised leachate management plan to Ohio EPA for approval.
8. Within one hundred eighty (180) days after Ohio EPA approval of the leachate management plan, Respondent shall complete construction of the leachate management system and implement it in accordance with the approved plan and all applicable federal and state laws.

Ground Water Management

9. Within ninety (90) days after the effective date of these Orders, Respondent shall submit and implement a revised plan for the ground-water detection monitoring program and a plan for the ground-water quality assessment program in accordance with OAC Rule 3745-27-10, et. seq., as that rule was effective March 1, 1990.

The ground-water detection monitoring program will be considered implemented upon the commencement of sampling of all ground-water monitoring wells in accordance

with paragraph (D) of OAC Rule 3745-27-10.

10. Ohio EPA shall review the ground-water detection monitoring program and, in the event that Ohio EPA determines that the ground-water detection monitoring program as submitted is deficient, Ohio EPA shall provide Respondent with a written notice of deficiencies. Respondent shall, within thirty (30) days after receipt of the notice of deficiencies, revise the ground-water detection monitoring to address the deficiencies and submit the revised ground-water detection monitoring program to Ohio EPA.
11. Within ninety (90) days after the effective date of these Orders, Respondent shall submit and implement a plan for the ground water quality assessment program in accordance with OAC Rule 3745-27-10, et. seq., as that rule was effective March 1, 1990.

The ground-water quality assessment program will be considered implemented upon the commencement of sampling of all ground-water monitoring wells in accordance with paragraph (E) of OAC Rule 3745-27-10.

12. Ohio EPA shall review the ground-water quality assessment program and, in the event that Ohio EPA determines that the ground-water quality assessment program as submitted is deficient, Ohio EPA shall provide Respondent with a written notice of deficiencies. Respondent shall, within thirty (30) days after receipt of the notice of deficiencies, revise the ground-water quality assessment program to address the deficiencies and submit the revised ground-water quality assessment program to Ohio EPA.
13. Upon authorization by the Director of Ohio EPA, Respondent may return to the indicator evaluation program in accordance with OAC Rule 3745-27-10(E)(7) and any conditional authorizations made by the Director. Upon receipt of this authorization, Respondent shall comply with all requirements of OAC Rule 3745-27-10(A) through (D), which includes, but is not limited to, the requirements set forth in the Facility's ground water sampling and analysis plan.

Closure

14. Within 30 days after the effective date of these Orders, Respondent shall complete and submit for Ohio EPA review a closure certification report as required by OAC Rule 3745-27-11(J). If this report does not meet the requirements of OAC Rule 3745-27-11(J), then Respondent shall submit a revised plan to Ohio EPA within 30 days of receiving Ohio EPA's comments.

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 someone who is the principal executive officer, the ranking elected official, or other duly authorized employee.

VII. 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.

VIII. NOTICE

All documents required to be submitted to Ohio EPA by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
347 North Dunbridge Road
Bowling Green, OH 43402

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

IX. 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 penalties

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

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Christopher Jones, Director