

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Penn-Ohio Coal Co.	:	<u>Director's Final Findings</u>
dba Kimble Sanitary Landfill	:	<u>and Orders</u>
3596 State Route 39, NW	:	
Dover, Ohio 44622	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Penn-Ohio Coal Company dba Kimble Sanitary Landfill ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 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 Kimble Sanitary Landfill (the "Facility") is located at 3596 State Route 39, NW, Dover, Tuscarawas 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. OAC Rule 3745-27-10(B)(5) requires the owner or operator to evaluate, at least annually until the end of the post-closure care period, the ground water surface elevation data obtained in accordance with paragraph (C)(3) of this rule to determine whether the requirements of paragraph (B) of this rule for locating the monitoring wells continue to be satisfied. The results of this evaluation including potentiometric maps for every geologic unit monitored shall be included in a report to be submitted to the appropriate Ohio EPA district office not later than twelve months from the previous report submitted to comply with this paragraph. If the evaluation shows that paragraph (B) of this rule is no longer satisfied, the owner or operator shall immediately revise the number, location, and/or depth of the monitoring wells to bring the ground water monitoring system into compliance with this requirement and place documentation of the revision into the operating record in accordance with paragraph (B)(3)(d) of this rule.
6. On March 31, 2004, Ohio EPA, Southeast District Office, Division of Solid and Infectious Waste Management ("SEDO-DSIWM") received the Facility's 2003 Annual Report ("the Report"), which contains the annual ground water evaluation required by OAC Rule 3745-27-10(B)(5).
7. Ohio EPA, SEDO-DSIWM's review of the Report's Section XXIII, Location of Groundwater Monitoring Wells, revealed that Respondent continues to utilize monitoring well UMW-2 to determine the direction of flow in the Homewood Interval beneath the old portion of the Facility.
8. In accordance with OAC Rule 3745-27-10(B)(5), Respondent is required to demonstrate that monitoring well UMW-2 is competent and communicating with portions of the Homewood Interval similar to other Homewood wells.
9. To date, Respondent has failed to provide Ohio EPA, SEDO-DSIWM with an adequate demonstration justifying continued use of UMW-2 for potentiometric

- determinations in the Homewood Interval beneath the old portion of the landfill, in violation of OAC Rule 3745-27-10(B)(5).
10. OAC Rule 3745-27-10(B)(1) requires the ground water monitoring system, for detection monitoring, assessment monitoring, or corrective measures, to consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from both the uppermost aquifer system and any significant zones of saturation that exist above the uppermost aquifer system.
 11. On December 12, 1998, Ohio EPA issued a permit-to-install ("1998 PTI") to Respondent which allowed Respondent to postpone the installation of monitoring wells DP-32, DP-32A, DP-33, DP-33A, and BP-43 until 2001.
 12. Ohio EPA, SEDO-DSIWM's review of potentiometric maps for the Dundee and Logan formations contained in the Report's Section XXIII, Location of Groundwater Monitoring Wells, revealed that monitoring wells DP-32, DP-32A, DP-33, DP-33A, and BP-43 have not been installed, to date, in violation of OAC Rule 3745-27-10(B)(1) and the 1998 PTI.
 13. In correspondence dated July 1, 2004, Ohio EPA, SEDO-DSIWM notified Respondent that continued use of monitoring well UMW-2 for potentiometric determinations is a violation of OAC Rule 3745-27-10(B)(5) and failure to install monitoring wells DP-32, DP-32A, DP-33, DP-33A, and BP-43 by 2001 is a violation of OAC Rule 3745-27-10(B)(1) and the 1998 PTI.
 14. In accordance with OAC Rule 3745-27-19(A), "[t]he owner or operator of a sanitary landfill facility shall comply with the requirements and operational criteria specified in this rule until all closure certifications required by paragraph (J) of rule 3745-27-11 of the Administrative Code are submitted and the post-closure care period begins."
 15. In accordance with OAC Rule 3745-27-19(B)(1), "[t]he owner or operator shall conduct all operations at a sanitary landfill facility in strict compliance with the terms and conditions of the solid waste disposal license issued for the facility in accordance with Chapter 3745-37 of the Administrative Code."
 16. In accordance with OAC Rule 3745-27-19(B)(2), "[t]he owner or operator shall conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing document(s), including permit(s) to install, a plan approval, an operational report, an approved closure plan, an alteration(s) concurred with in writing by Ohio EPA, or a document(s) listed in paragraph (F)(1) of rule 3745-27-09 of the Administrative Code."

17. In accordance with OAC Rule 3745-27-19(E)(8)(c), “[t]he owner or operator shall not accept for disposal or dispose of materials that are defined as hazardous wastes pursuant to rule 3745-51-03 of the Administrative Code at a sanitary landfill facility.”
18. On October 30, 2003, Ohio EPA, SEDO, Division of Hazardous Waste Management (“SEDO-DHWM”) conducted an inspection of Sugarcreek Industries, Inc., and discovered that the company was intermittently disposing of methylene chloride, a regulated hazardous waste as defined in OAC Rule 3745-51-03, at the Facility. Ohio EPA, SEDO-DHWM estimates that Sugarcreek Industries disposed of approximately 20 gallons of the regulated hazardous waste per year from 1996 through 2003.
19. On January 27, 2004, Ohio EPA, SEDO-DSIWM conducted an inspection of the Facility and in correspondence dated February 9, 2004, notified Respondent of violations of OAC Rule 3745-27-19(A), (B)(1), (B)(2), and (E)(8)(c) at the Facility.
20. On February 18, 2004, the Tuscarawas County Health Department (the “Health Department”) conducted an inspection of the Facility and in correspondence dated February 20, 2004, notified Respondent that violations of OAC Rule 3745-27-19(E)(8)(c) will continue to accrue until the hazardous waste is removed from the Facility or the matter is resolved through enforcement.
21. On February 27, 2004, the Health Department conducted an inspection of the Facility and in correspondence dated March 1, 2004, notified Respondent that violations of OAC Rule 3745-27-19(E)(8)(c) will continue to accrue until the hazardous waste is removed from the Facility or the matter is resolved through enforcement.
22. On March 12, 2004, the Health Department conducted an inspection of the Facility and in correspondence dated March 18, 2004, notified Respondent that violations of OAC Rule 3745-27-19(E)(8)(c) will continue to accrue at the Facility until the hazardous waste is removed from the Facility or the matter is resolved through enforcement.
23. On June 11, 2004, Ohio EPA, SEDO-DSIWM conducted another inspection of the Facility, and in correspondence dated June 23, 2004, Ohio EPA notified Respondent of violations of OAC Rule 3745-27-19(A), (B)(1), (B)(2), and (E)(8)(c).
24. To date, the hazardous waste has not been removed and violations of ORC Chapter 3734. and OAC Rule 3745-27-19 remain.

V. ORDERS

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

1. Respondent shall cease to utilize monitoring well UMW-2 for potentiometric purposes and shall continue to use monitoring well P-8 for the determination of potentiometric surfaces.
2. Respondent shall:
 - a. Within ninety (90) days after the effective date of these Orders, install a cluster of ground water monitoring wells in Homewood, Logan and Dundee Formations on the eastern side of the Facility. This cluster of wells shall be located down gradient and approximately 275 feet from the existing limits of waste placement in Cell 1D; and
 - b. revise the Facility's ground water monitoring plan to include the above-noted cluster of wells and perform monitoring, in accordance with OAC Rule 3745-27-10(C) and (D), until such time that Facility construction necessitates the abandonment of these wells.
 - c. Within one hundred and twenty (120) days after the effective date of these Orders, install a cluster of ground water monitoring wells in the Logan and Dundee Formations on the northern side of the Facility. This cluster shall be located outside the final limits of waste placement at the Facility; and
 - d. revise the Facility's ground water monitoring plan to include the above-noted cluster of wells and perform monitoring, in accordance with OAC Rule 3745-27-10(C) and (D).
3. Within sixty (60) days prior to abandonment of the monitoring wells required by Order No. 2 (a), Respondent shall install monitoring wells in accordance with the Facility's currently effective PTI.
4. Within thirty (30) days after the effective date of these Orders, Respondent shall revise the Facility's PCB and hazardous waste prevention and detection program, which is required by OAC Rule 3745-27-19(L), so as to prevent future occurrences of illegal hazardous waste acceptance at the Facility.
5. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit the Facility's revised PCB and hazardous waste prevention and detection program to Ohio EPA for comment, and within fourteen days after receipt of Ohio EPA's comments, place the revised document into the operating record.

6. In accordance with the Facility's current groundwater monitoring detection program, established under OAC Rule 3745-27-10, Respondent shall continue to monitor for the parameter methylene chloride.
7. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$12,360.00 in settlement of Ohio EPA's claims for civil penalties, 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 \$12,360.00. 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 Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit.

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 one 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'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

Tuscarawas County Health Department
Attn: Director of Environmental Health
897 East Iron Avenue, P.O. Box 443
Dover, Ohio 44622-0443

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:

Christopher Jones, Director

IT IS SO AGREED:

**Penn-Ohio Coal Co.
dba Kimble Sanitary Landfill**

Signature

Date