



State of Ohio Environmental Protection Agency

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Mr. Bill Weber, District Manager  
Waste Management of Ohio, Inc.  
5723 Este Avenue  
Cincinnati, Ohio 45232

**RE: Verified Complaint No. SW-04-001  
Hamilton County**

Dear Mr. Weber:

The purpose of this letter is to respond to the Verified Complaint (SW-04-001) filed by Waste Management of Ohio, Inc. ("WMO") and received by the Ohio Environmental Protection Agency ("Ohio EPA") on June 1, 2004, in which WMO alleged that the Cincinnati Board of Health ("Board of Health") failed to administer Ohio's solid waste statutes and regulations by denial of WMO's solid waste license application for the Cincinnati Transfer Station ("Facility") for calendar years 2002, 2003, and 2004 and by failing to comply with a lawful mandate of the Ohio Environmental Review Appeals Commission ("ERAC"). The Verified Complaint also requested that the Board of Health be removed from the list of approved health districts. Ohio EPA's Southwest District Office ("SWDO") has conducted an investigation of this matter and has been monitoring the situation closely.

By resolution dated February 26, 2002, the Board of Health voted to deny WMO's 2002 solid waste license application for the Facility. The Board of Health based the denial on the grounds that WMO had not demonstrated to the Board's satisfaction that WMO met all of the licensing preconditions set forth in ORC 3734.44. On March 28, 2002, WMO filed a Notice of Appeal with ERAC. By resolution dated December 10, 2002, the Board of Health also voted to deny WMO's 2003 solid waste license application for the Facility.

On March 25, 2004, ERAC issued final Findings of Fact, Conclusions of Law and Final Order. ERAC found that WMO had demonstrated that it satisfied all legal preconditions to licensure and remanded the case to the Board of Health for action. The Board of Health appealed ERAC'S decision to Ohio's Tenth District Court, but the Court upheld ERAC's decision.

On August 25, 2004, the Board of Health issued a 2004 solid waste license for the Facility. On August 27, 2004, the Facility received the license by hand delivery after the Cincinnati Health Department conducted the required licensing inspection on that same day.

Ohio Revised Code ("ORC") Section 3745.08(A) states, "...any person who is or will be aggrieved or adversely affected by a violation that has occurred, is occurring, or will occur may file a complaint...with the director of environmental protection...alleging that another...person

Bob Taft, Governor  
Jennette Bradley, Lieutenant Governor  
Joseph P. Koncelik, Director

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has violated, is violating, or will violate any law, rule, standard, or order relating to air pollution, water pollution, solid waste, infectious wastes, construction and demolition debris, public water supply, hazardous waste, or cessation of chemical handling operations, or, if the person is in possession of a valid license, permit, variance, or plan approval relating to air pollution, water pollution, solid waste, infectious wastes, construction and demolition debris, public water supply, or hazardous waste, that the person has violated, is violating, or will violate the conditions of the license, permit, variance, or plan approval....”

Based on the results of the investigation, Ohio EPA did not find a violation of ORC Chapter 3734. The Board of Health was exercising its role as a licensing authority when it denied WMO’s solid waste license application for the Facility. In this capacity, the Board of Health’s actions and any concerns about these actions are a matter of ERAC’s jurisdiction.

Additionally, pursuant to ORC Section 3745.08(B), “[i]f the director does not determine that a violation, as alleged, has occurred, is occurring, or will occur, he shall dismiss the complaint.” The Board of Health’s actions in this matter were litigated, and the Board of Health did not prevail. As a result, the Board of Health has issued the Facility a solid waste license. In light of this litigation and the Board of Health’s subsequent issuance of a solid waste license, I have determined no past violations of law have occurred and that future violations of the same kind are unlikely to occur. Therefore, WMO’s Verified Complaint No. SW-04-001, is hereby dismissed.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served upon the Director of the Ohio Environmental Protection Agency within three (3) days of filing with the Board. An appeal may be filed with the Environmental Review Appeals Commission, 309 South Fourth Street, Room 222, Columbus, OH 43215.

If you have any questions, please contact Holly Hillyer in our Southwest District Office at (937) 285-6072 or Melinda Berry in our Division of Solid and Infectious Waste Management, Compliance Monitoring and Enforcement Unit at (614) 728-5339.

Sincerely,

Joseph P. Koncelik  
Director

JPK/MB/sw

cc: Dan Harris, Chief, DSIWM  
Ed Gortner, DSIWM  
Jeff Hurdley, Legal