

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Tunnell Hill Reclamation LLC	:	<u>Director's Final Findings</u>
544 Chestnut Street	:	<u>and Orders</u>
Coshocton Ohio, 42812	:	
	:	
and	:	
	:	
Oxford Mining Company	:	
544 Chestnut Street	:	
P.O. Box 427	:	
Coshocton Ohio, 42812	:	

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tunnell Hill Reclamation LLC and Oxford Mining Company ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3734.02(G), 3714.12 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents, and their assigns and successors in interest liable under Ohio law. No changes in ownership of the Respondents, or of the Facility, as hereinafter defined, owned by Respondent Tunnell Hill Reclamation LLC will in any way alter Respondents' responsibilities under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3734. and 3714. and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders, the following definitions apply:

1. "Waste Materials" means all of the approximately 40,000 cubic yards of debris located in the Facility.
2. "Facility" means the construction and demolition debris facility located on Tunnell Hill Road in New Lexington, Perry County, Ohio.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Tunnell Hill Reclamation LLC, construction and demolition debris disposal facility is located on Tunnell Hill Road in New Lexington, Perry County, Ohio.
2. The Facility is a "construction and demolition debris facility" as defined under Ohio Administrative Code (OAC) Rule 3745-400-01(G).
3. Tunnell Hill Reclamation LLC is the "owner" and/or "operator" of the Facility as those terms are defined in OAC Rule 3745-400-01(EE) and (I), respectively, and is a "person" as defined under ORC Section 3714.01(H) and OAC Rule 3745-400-01(DD). Respondent Oxford Mining Company transferred ownership of the property upon which the construction and demolition debris facility is located to Respondent Tunnell Hill Reclamation LLC.
4. OAC Rule 3745-400-11(B)(1) states "The owner or operator shall conduct all operations at the facility in strict compliance with the license, any orders, and other authorizing documents issued in accordance with Chapter 3714. of the Revised Code."
5. OAC Rule 3745-400-11(F) states, in part, "Prior to acceptance by the facility, debris shall be readily identifiable as construction and demolition debris and shall not have been shredded, pulverized, or otherwise rendered to the extent that the debris is unidentifiable."
6. OAC Rule 3745-400-11(F)(2) prohibits the owner or operator of a construction and demolition debris facility from disposing of any solid wastes except for packaging which results from the use of construction materials if it is incidental to the load.
7. OAC Rule 3745-400-11(P)(1) states, "The owner or operator shall operate the leachate collection system to maintain no more than one foot of head anywhere on the *in situ* and/or added geologic material or constructed liner with the exception of the sump area(s)."

8. OAC Rule 3745-400-11(Q)(1) states, “The owner or operator shall divert surface and ground water from the active and inactive licensed disposal areas of the facility by nonmechanical means. The owner or operator shall not divert surface water under, over, or through disposal areas of a facility.”
9. OAC Rule 3745-400-11(Q)(3) states, “If ponding or erosion occurs in active or inactive licensed disposal areas, the owner or operator shall correct the conditions causing the ponding or erosion.”
10. OAC Rule 3745-27-05 (A) states, “[d]isposal of solid waste under Chapter 3734. of the Revised Code shall only be by the following methods or combination thereof:
 - (1) Disposal at a sanitary landfill facility licensed in accordance with section 3734.05 of the Revised Code.
 - (2) Incinerating at an incinerator licensed in accordance with section 3734.05 of the Revised Code.
 - (3) Composting at a composting facility licensed or registered in accordance with section 3734.05 of the Revised Code.
 - (4) Alternative disposal methods either as engineered fill or land application,

provided that the applicant has received prior authorization from the director that use as engineered fill or land application of the solid wastes will not create a nuisance or harm human health or the environment and is capable of complying with other applicable laws.”

11. OAC Rule 3745-27-05(C) states, “[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734. of the Revised Code, and shall submit verification that the solid waste has been properly managed.”
12. The Facility received its initial license from the Perry County Board of Health (“Board”) in January of 2003. Construction of the Facility was certified complete on November 7, 2003, and the Facility began accepting construction and demolition debris for disposal on November 10, 2003.
13. On November 10, 2003, November 12, 2003, and November 13, 2003, Ohio EPA conducted three separate inspections at the Facility and observed the following

violations:

- a. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
- b. OAC Rule 3745-400-11(P)(1) for failure to maintain less than one foot of head on the constructed liner.

These inspections were documented in letters to Respondent Tunnell Hill Reclamation LLC ("Respondent Tunnell Hill") dated November 18, 2003, and November 20, 2003.

14. On November 12, 2003, and November 13, 2003, the Perry County Health Department ("Health Department") conducted two separate inspections at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-27-05 (A) for disposal of solid waste in an inappropriate manner.
 - c. OAC Rule 3745-400-11(Q)(1) for failure to divert surface water from active and inactive licensed disposal areas of the Facility.

These inspections were documented in letters to Respondent Tunnell Hill dated November 24, 2003, and November 25, 2003.

15. On November 17, 2003, and November 24, 2003, Ohio EPA conducted two separate inspections at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
 - d. OAC Rule 3745-400-11(P)(1) for failure to maintain less than one foot of head on the constructed liner.
 - e. OAC Rule 3745-27-05(C) for open dumping of solid waste.

These inspections were documented in a letter to Respondent Tunnell Hill dated

December 10, 2003.

16. On November 24, 2003, the Health Department conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-27-05(A) for disposal of solid waste in an inappropriate manner.

This inspection was documented in a letter to Respondent Tunnell Hill dated November 25, 2003.

17. On November 26, 2003, the Health Department conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-27-05(A) for disposal of solid waste in an inappropriate manner.
 - c. OAC Rule 3745-27-05(B) for open burning of solid waste.

This inspection was documented in a letter to Respondent Tunnell Hill dated November 26, 2003.

18. On December 8, 2003, Ohio EPA conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
 - d. OAC Rule 3745-27-05(C) for open dumping of solid waste.

This inspection was documented in a letter to Respondent Tunnell Hill dated January 6, 2004.

19. On December 22, 2003, Ohio EPA conducted an inspection at the Facility and observed the following violations:

- a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
- b. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
- c. OAC Rule 3745-27-05(C) for open dumping of solid waste.
- d. OAC Rule 3745-400-11(P)(1) for failure to maintain less than one foot of head on the constructed liner.

This inspection was documented in a letter to Respondent Tunnell Hill dated January 12, 2004.

- 20. As a condition of the Facility's 2004 license, the Health Department required the Facility to submit and implement a plan that would address rescreening of waste in the active licensed disposal area ("ALDA") and removal of any solid waste identified during the rescreening process.
- 21. By at least January 8, 2004, the Facility had begun rescreening the waste in the ALDA.
- 22. Ohio EPA continued to conduct inspections during the rescreening process to ensure that all solid waste was removed from the ALDA. These inspections, as outlined in findings 24 thru 29 below, document, among other violations, the Facility's failure to successfully remove all solid waste from the ALDA.
- 23. On January 8, 2004, Ohio EPA conducted an inspection at the Facility and observed the following violations:
 - a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
 - d. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - e. OAC Rule 3745-400-11(P)(1) for failure to maintain less than one foot of head on the constructed liner.

This inspection was documented in a letter to Respondent Tunnell Hill dated January 14, 2004.

24. On January 13, 2004, and January 14, 2004, Ohio EPA conducted two separate inspections at the Facility and observed the following violations:
- a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
 - d. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - e. OAC 3745-400-11(Q)(3) for failure to correct the conditions causing ponding.

These inspections were documented in letters to Respondent Tunnell Hill dated January 21, 2004, and January 22, 2004.

25. On January 20, 2004, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - d. OAC 3745-400-11(Q)(3) for failure to correct the conditions causing ponding.

This inspection was documented in a letter to Respondent Tunnell Hill dated January 30, 2004.

26. On January 22, 2004, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-400-11(F)(2) for illegal disposal of solid waste.
 - d. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - e. OAC 3745-400-11(Q)(3) for failure to correct the conditions causing ponding. This inspection was documented in a letter to Respondent Tunnell Hill dated

January 27, 2004.

27. On February 2, 2004, and February 3, 2004, Ohio EPA conducted two separate inspections at the Facility and observed the following violations:
- a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-27-05(C) for open dumping of solid waste.
 - d. OAC Rule 3745-400-11(P)(1) for failure to maintain less than one foot of head on the constructed liner.
 - e. OAC 3745-400-11(Q)(3) for failure to correct the conditions causing ponding.

These inspections were documented in a letter to Respondent Tunnell Hill dated February 12, 2004.

28. Following receipt of the February 12, 2004, NOV Respondent corrected the conditions causing ponding at the Facility with the addition of additional soil and increased the pumping capacity of the sump to decrease the amount of head on the liner of the Facility to less than one foot.
29. On April 19, 2004, the Board issued an exemption from the requirements of OAC 3745-400-11(F) that construction and demolition debris must be “readily identifiable” prior to acceptance for disposal by Tunnell Hill Reclamation LLC.
30. On May 18, 2004, the Director of Ohio EPA filed a Notice of Appeal to the Environmental Review and Appeals Commission regarding the exemption.
31. On August 25, 2004, Ohio EPA conducted an inspection at the Facility and observed the following violations:
- a. OAC Rule 3745-400-11(B)(1) for failure to conduct operations at the Facility in strict compliance with all authorizing documents.
 - b. OAC Rule 3745-400-11(F) for acceptance and disposal of unidentifiable waste.
 - c. OAC Rule 3745-27-05(C) for open dumping of solid waste.

These inspections were documented in a letter to Respondent Tunnell Hill dated September 8, 2004.

32. On November 18, 2004, the Director of Ohio EPA filed a Notice of Appeal of the

Board's minutes dated October 18, 2004, renewing Tunnell Hill Reclamation LLC's construction and demolition debris Facility license for 2005.

33. The recreening process conducted by the Facility failed to remove all solid waste. The Facility remains in violation of OAC Rule 3745-400-11(F), OAC Rule 3745-400-11(F)(2), and OAC Rule 3745-27-05(C). Tunnell Hill Reclamation LLC has denied and continues to deny any and all violations of OAC Rule 3745-400-11(B)(1), OAC Rules 3745-400-11(F) and/or OAC Rule 3745-27-05.
34. On January 12, 2005, Tunnell Hill Reclamation LLC filed an application under ORC Chapter 3734. and the regulations promulgated pursuant thereto at OAC Chapter 3745-27 for a permit to install a sanitary landfill to be located adjacent to the existing construction and demolition debris Facility. That permit to install application was revised on May 27, 2005, November 28, 2005, and March 13, 2006, and is currently pending before the Ohio EPA.
35. During September of 2005, Respondent Tunnell Hill submitted to the Board an application to renew the construction and demolition debris Facility license for 2006. The Board has not taken a final action on the license application.
36. Based upon information submitted with the January 12, 2005, application for a permit to install, the saturated mine spoil beneath and surrounding the ALDA is an unconsolidated aquifer. In addition, as shown in the 2006 construction and demolition debris Facility license application, the potentiometric surface of water within the mine spoil is at approximately 905 feet above MSL within the constructed portion of the ALDA. Also, the potentiometric surface of the mine spoil aquifer in future ALDA areas of the Facility is shown in the application to be up to elevation 924'. The elevation of the leachate collection system's sump is depressed into the modeled ground water table by its construction at approximately 895 feet above MSL. This difference in water levels establishes a hydrologic gradient toward the leachate system's sump through the recompacted soil liner and structural fill/barrier layer. As a result, Respondent Tunnell Hill has failed to divert ground water for the ALDA by nonmechanical means to minimize the generation of leachate in violation of OAC 3745-400-11(Q)(1). Ohio EPA notified Respondent Tunnell Hill of this violation in correspondence dated August 4, 2005. Tunnell Hill Reclamation LLC has denied and continues to deny any and all violations contained in Ohio EPA's August 4, 2005 letter, including but not limited to any violations of OAC Rule 3745-400-11(Q)(1).

V. ORDERS

Respondent shall achieve compliance with Chapters 3714. and 3734. of the ORC and the rules promulgated thereunder according to the following compliance schedule:

1. Within three hundred sixty-five (365) days after the effective date of the permit to install for the sanitary landfill owned by Tunnell Hill Reclamation LLC located adjacent to the Facility, Respondent Tunnell Hill shall remove all Waste Material

from the Facility and dispose of the Waste Material at the sanitary landfill owned by Tunnell Hill LLC located adjacent to the Facility. Respondents shall obtain disposal receipts from the from the adjacent sanitary landfill indicating weight or volume of wastes disposed. No solid waste disposal fee shall be required for the relocation of the Waste Material currently located at the Facility to the adjacent sanitary landfill. If the Director does not issue a final permit to install for the construction of a sanitary landfill owned by Respondent Tunnell Hill Reclamation LLC located adjacent to the Facility, the Director and Respondents shall negotiate in good faith to achieve a resolution concerning the relocation or other disposition of the Waste Material.

2. Given the location of the unconsolidated aquifer as described in Finding of Fact No. 36 of these Orders, and notwithstanding any exemptions that may be issued to the contrary, the Facility shall not accept any construction and demolition debris or other waste for disposal until a construction and demolition debris license is obtained for the Facility that does all of the following:
 - a. Recognizes that the mine spoil is the first continuous zone of saturation beneath the Facility.
 - b. Provides for ground water monitoring of the mine spoil as the first continuous zone of saturation beneath the Facility.
 - c. Redesigns the landfill liner system to be above the potentiometric surface of the mine spoil aquifer to allow for diversion of surface and ground water from the Facility by nonmechanical means.
 - d. Requires the removal of the existing scrap tire drainage layer at the Facility for either disposal at a licensed and permitted sanitary landfill or for cleaning and reuse as a drainage layer above the redesigned liner system at the Facility.
 - e. Requires the liner system at the Facility to be raised to at least elevation 924'.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "We certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official of each Respondent. For the purposes of these Orders a responsible official is a corporate officer who is in charge of a principal business function of the Respondent.

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 the 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 Respondents or the Facility.

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. The Parties agree that these Orders may be modified upon the Director's concurrence in writing, pursuant to the procedures established in this Section, that the conditions as described in Finding of Fact No. 36 of these Orders no longer exist in such a way as to prevent the diversion of surface or ground water from the Facility by nonmechanical means in order to minimize the generation of leachate.

X. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: DSIWM - Unit Supervisor

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein except as provided below. The parties agree, however, that this accord and satisfaction shall not bar or prevent Ohio EPA from pursuing all claims or causes of action against Respondents, and/or from taking any action, related to groundwater contamination associated with the Facility.

In addition, the parties agree that there is no accord and satisfaction for Respondents' liability for the violations specifically cited herein if the parties are required to resume negotiations as provided in Section V, Order No. 1 of these Orders. In such case, the parties reserve all rights, privileges, causes of action and defenses except that Respondents agree that the time between the effective date of these Orders and the issuance of a final action regarding the application for a permit to install a sanitary landfill located adjacent to the Facility will not be included in computing the time periods under the statute of limitations set forth in ORC § 3745.31. Respondents agree not to assert, plead or raise in any fashion, in any such action hereafter initiated or maintained by the State of Ohio, whether by answer, motion or otherwise, any defense or avoidance based on (a) the running of the statute of limitations during the aforementioned period; or (b) laches or other principles concerning the timeliness of commencing a civil action based upon the failure of the State of Ohio to assert such claims during the aforementioned period; and the statute of limitations shall be tolled during and for such period.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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

Joseph P. Koncelik
Director

IT IS SO AGREED:

Tunnel Hill Reclamation, LLC

Charles C. Ungurean

Date

Printed or Typed Name

Oxford Mining Company

Charles C. Ungurean

Date

Printed or Typed Name