

Butler Co
Schlichter UF
Gen. Corr.
(copy in GW file)



State of Ohio Environmental Protection Agency

Southwest District

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

August 24, 2007

Henry L. Bowling
125 Hermay Drive
Hamilton, Ohio 45013

Don Hershner,
3653 Oxford Millville Rd
Oxford, Ohio 45056-9038

RE: **Schlichter C&DD Facility, Butler County**
Notice of Violation- Failure to Comply with Consent Orders & Inspection
Correspondence

Dear Mr. Bowling and Mr. Hershner:

On March 27, 2007, Greg Brown representing Ohio EPA, Division of Drinking and Ground Waters (DDAGW) and I representing Ohio EPA, Division of Solid and Infectious Waste Management (DSIWM) met with Mr. Hershner to conduct a comprehensive inspection of the Schlichter C&DD Landfill (Foundation's Landfill) located in Butler County. The purpose of our inspection was to determine compliance with the requirements set forth in Agreed Order for Judgment (Order) between the State of Ohio (Ohio EPA as the Plaintiff) and Old River Valley Place of Nature Foundation (Foundation as the Defendant) filed in Butler County Court of Common Pleas dated March 9, 2007.

During our inspection the following observations were made:

1. The ground water monitoring well inspection revealed well MW-5 is heavily damaged. The well seal no longer prevents contamination of samples and the ground water. Damage to the surface seals was also noted on wells MW-3 and MW-4 which has been caused by erosion.

The owner/operator needs to make repairs to the wells to prevent contamination of samples and the ground water. The owner/operator needs to have a well contractor or equivalent professional inspect and repair well MW-5. If well MW-5 is beyond repair then abandonment and replacement options need to be investigated and with OEPA knowledge, consensus, and approval of those option(s) undertaken.

2. The well pad around well MW-3 needs additional soil added to prevent water from ponding and graded so that water will drain away from the well. Erosion control around well MW-4 requires more effort. The surface seal needs to be repaired by the addition of concrete beneath the current seal or a new seal needs to be constructed. Care should be used to prevent changing the inner well casing top of casing elevation; otherwise, a new survey of this elevation would be needed. Once the surface seal is again intact, erosion control is necessary to prevent the same problem from recurring. Re-grading the area so that surface water drains around the well may require the use of heavy equipment because substantial earth moving and grading may be necessary.
3. Rusty outer well casings on wells MW-1, MW-2, and MW-3, all need painting (suggest non-toxic, non-aerosol, and highly visible color). All wells need their individual well identification number clearly labeled on the outer casing. Locks observed on wells MW-5 and MW-6 need to be unfrozen or replaced. If new or different keys are used then copies of those keys need to be provided to the Ohio EPA, SWDO. Vegetative overgrowth needs to be removed or trimmed around each well for year round access. Erosion around well pads should be repaired whenever observed.
4. The Director's Final Findings & Orders for the Old River Valley Place of Nature Foundation effective December 31, 2002 have not been satisfied and assessment has not been initiated. Violations identified during the June 3, 2004, DDAGW inspection have not been adequately addressed. All seven (7) violations cited during the June 2, 2004-inspection remain.
5. During this inspection I did not observe any closure activities taking place at the Facility. There is still municipal solid waste and construction and demolition debris visible on the surface of the active landfill disposal area (ALDA), including but not limited to: a rubber boot, golf shoe, plastic bags, beach ball, large piece of poly-based material, a plastic cup, hangers, basketball, a plastic swing seats and slide, plastic toy, and a plush toy, wallboard, shingles, wood debris, bricks, and concrete. As previously stated, the Foundation has not completed final closure therefore several areas of erosion were observed along the top and along the slope in the southern part of the ALDA. This erosion has exposed waste material previously covered with fly ash.

In accordance with the Agreed Order for Judgment (Order) between the State of Ohio (Ohio EPA as the Plaintiff) and Old River Valley Place of Nature Foundation

(Foundation as the Defendant) filed in Butler County Court of Common Pleas on March 9, 2007, the Foundation is in violation of said Order as the following items have not been addressed within the specified timeline of this Order.

1. *Section III. Satisfaction of Lawsuit and Effect of Order, No.7 states in part: "Within thirty (30) days after entry of the Order, Defendant Foundation agrees to forfeit to Plaintiff State of Ohio all non real estate assets including, but not limited to, cash, annuities, insurance policies, stock, stock options, stock funds, money market funds, and bank accounts of all types owned by Defendant Foundation".*

As of August 21, 2007, the Foundation has not forfeited to Plaintiff State of Ohio all non real estate assets including, but not limited to, cash, annuities, insurance policies, stock, stock options, stock funds, money market funds, and bank accounts of all types owned by Defendant Foundation in violation of Order No. 7.

2. *Section III. Satisfaction of Lawsuit and Effect of Order, No.9 states in part: "Not later than April 30 of each year following entry of this Order, Defendant Foundation agrees to submit to Plaintiff State of Ohio income tax statements for the previous year, as well as a written inability-to-pay argument that specifically addresses financial reasons why injunctive relief cannot be performed and/or compliance costs cannot be paid. Plaintiff agrees to review the above documents submitted by Defendant Foundation to determine Defendant Foundation's inability to pay. The ability-to-pay analysis will take into consideration the estimated cost for closure and post-closure care at Defendant Foundation's Landfill.*

As of August 21, 2007, the Foundation has failed to provide the income tax statements to Plaintiff State of Ohio for the previous year, as well as their written inability-to-pay argument that specifically addresses financial reasons why injunctive relief cannot be performed and/or compliance costs cannot be paid in violation of Order No. 9.

3. *Section III. Satisfaction of Lawsuit and Effect of Order, No.11 states in part: "Defendant Foundation is authorized to accept donations, in the form of monetary donations or donations in kind, not to exceed ten thousand dollars (\$10,000) annually. Donations shall only be used for security, maintenance, upkeep and/or closure of Defendant Foundation's Landfill in accordance with Ohio Adm.Code 3745-27-11... Defendant Foundation shall submit to Plaintiff annually, no later than April 30, a report of all receipts and expenditures from the previous year, to include a purpose of each expenditure".*

As of August 21, 2007, the Foundation has failed to provide a report to Plaintiff State of Ohio, of all receipts and expenditures from the previous year, to include a purpose of each expenditure in violation of Order No. 11.

4. *Section III. Satisfaction of Lawsuit and Effect of Order, No.5 states in part: "Defendant Foundation admits liability with respect to Counts One through Four of Plaintiff's Complaint. Closure of Defendant Foundation's Landfill shall be performed in accordance with Ohio Adm.Code 3745-27-11".*

To date, the Foundation has not performed closure of the Facility in accordance with Ohio Administrative Code 3745-27-11 in violation of Order No. 5.

Compliance with the requirements outlined in this letter shall not relieve you of your obligation to comply with other legal obligations, including, but not limited to, Chapters 3704, 3714, 3734, or 6111 of the Ohio Revised Code or under the Federal Clean Water Act, Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, or Resource Conservation and Recovery Act remedying conditions resulting from any release of contaminants to the environment.

Corrections of the aforementioned violations are expected to begin immediately upon receipt of this letter. If you have any questions or need any additional information, please call me at (937) 285-6046.

Sincerely,


Maria Lammers, R.S.

Environmental Specialist II
Division of Solid and Infectious Waste Management

cc: Gerald S. Leshner, Attorney at Law
Carl Mussenden, Ohio EPA, DSIWM-CMEU
Greg Brown, DDAGW/SWDO

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