



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

CERTIFIED MAIL

91 7108 2133 3932 1840 0612

December 1, 2011

#40489

City of Akron
175 South Main Street
Akron, Ohio 44308

IRG RC 10 LLC
P.O. Box 910
Hartville, OH 44632

**Re: Director's Final Findings and Orders,
Seiberling Street Landfill, City of Akron**

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Sincerely,

Georgia Frakes
Processing and Records Management Unit
Division of Materials & Waste Management

Enclosure

cc: Scott Hester, CO, DMWM
Allison Giancola, NEDO, DMWM
Julie Brown, Summit County Health Department

OHIO E.P.A.

NOV 30 2011

ENTERED DIRECTOR'S JOURNAL

Issuance Date: NOV 30 2011
Effective Date: NOV 30 2011

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In The Matter Of:

City of Akron :
175 South Main St. :
Akron, Summit County, OH 44308 :

And :
:

IRG RC 10 LLC :
P.O. Box 910 :
Hartville, Summit County, OH 44632 :

Director's Authorization and
Exemption Order

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

By: DMC Cassler Date: 11-30-11

It is agreed by the parties hereto as follows:

I. JURISDICTION

This Director's Authorization and Exemption Order (hereinafter "Order") is hereby entered into with the City of Akron ("Akron") and IRG RC 10 LLC, an Ohio limited liability corporation ("IRG RC 10") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.02, 3734.13, and 3745.01, as well as Ohio Administrative Code ("OAC") Rules 3745-27-03 and 3745-27-13. This Order concerns the "Rule 13 Authorization

Application, Construction Activities, Seiberling Way Phase II, Roadway Improvements, Seiberling Street Landfill, Akron, Ohio, as amended" ("Rule 13 Request") submitted to Ohio EPA by Akron and defined herein.

II. PARTIES

This Order shall apply to and be binding upon Akron and its successors in interest liable under Ohio law. This Order shall also apply to and be binding upon IRG RC 10 and its successors in interest liable under Ohio law only to the extent applicable as specifically indicated within this Order. No changes in ownership relating to the Rule 13 Area, as defined herein, shall in any way alter Akron's and IRG RC 10's obligations under this Order. Akron shall provide a copy of this Order to all contractors, subcontractors, and consultants retained to perform construction or any other activities or work pursuant to this Order. Akron shall ensure that all contractors, subcontractors, and consultants retained to perform construction or any other activities or work pursuant to this Order also comply with all applicable provisions of this Order. Akron's and IRG RC 10's obligations under this Order may be altered only by the written approval of the Director of Ohio EPA in accordance with Section VII of this Order, "Modifications and Alterations".

III. DEFINITIONS

Unless otherwise stated, all terms used in this Order shall have the same meaning as used in ORC Chapter 3734 and the rules promulgated thereunder. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of this Order.

Whenever the terms listed below are used in this Order or in any exhibits, attached hereto and incorporated herein, the following definitions shall apply:

- A. "Rule 13 Request" shall mean the document titled, "Rule 13 Authorization Application, Construction Activities, Seiberling Way Phase II, Roadway Improvements, Seiberling Street Landfill, Akron, Ohio," submitted to Ohio EPA on June 30, 2011, and amended on September 13, October 3, October 25, and November 9, 2011, including all appendices thereto. The Rule 13 Request is attached hereto as Exhibit 1 and is incorporated into this Order by reference as if it were fully rewritten herein.
- B. "Rule 13 Area" shall mean that portion of the Seiberling Street Landfill facility located between Seiberling Street and Massillon Road, in Akron, Summit County, Ohio, as designated on the "Rule 13 Limits – Overall" property ownership map included in Exhibit 2 of this Order. The Rule 13 Area is an approximately 11.814-acre disturbance area for road and related constructions. The Rule 13 Area consists of the following three identified parts: (1) the approximately 2.108 acres that is a part of Akron's dedicated road area as identified in the March 31, 2011 Offer of Dedication and Plat; (2) the approximately 7.509 acres that is located to the south of Akron's dedicated road owned by IRG RC 10; and (3) the approximately 2.197 acres to the north of Akron's dedicated road owned by IRG RC 10. The legal descriptions and a drawing of the 11.814-acre Rule 13 Area boundary including the approximately 2.108 acres owned by Akron, and the approximately 9.706 acres owned by IRG RC 10, are also attached hereto as Exhibit 2 and incorporated into this Order by reference as if fully rewritten herein.

IV. FINDINGS OF FACT

The Director of Ohio EPA ("Director") has determined the following findings:

1. Goodyear Tire & Rubber Company ("Goodyear") owned and operated the approximately 167.3652-acre Seiberling Street Landfill continuously from the 1920s until it ceased operation in 1989, and closed under the rules as effective

July 28, 1976. The Seiberling Street Landfill is located to the east of Seiberling Street and to the west of Massillon Road, in the city of Akron, Summit County, Ohio.

2. In a letter to Ohio EPA dated November 19, 1979, Goodyear identified that the landfill accepted scrap butadiene/acrylonitrile rubbers, scrap butadiene/styrene resins, scrap butadiene/vinyl toluene resins, latex wastes filter cake, paper, fly ash, solid rubber trimmings, plastics, and soapstone slurry cuttings.
3. In a "Notification of Hazardous Waste Site form OMB No. 2000-0138" including an attached map, Goodyear identified to Ohio EPA the areas of the Seiberling Street Landfill where hazardous wastes were disposed. The areas identified on the map provided by Goodyear include the Rule 13 Area.
4. Goodyear began its landfill operations in the 1920's. Various correspondence in Ohio EPA records for the Seiberling Street Landfill indicate that waste acceptance at the Seiberling Street Landfill ceased in May 1989 and substantial closure of the Seiberling Street Landfill was completed in November 1989.
5. The northern approximately 80.1025-acre portion of the Seiberling Street Landfill was transferred from Goodyear to IRG RC 10 in May, 2009.
6. Approximately 4.7466 acres of IRG RC 10's 80.1025 acre portion of the Seiberling Street Landfill property (Summit County Parcel Number 6763115) was transferred to Akron through an Offer of Dedication and Plat, which was recorded on March 31, 2011.

7. Akron intends to construct a road and related improvements that extend across the middle of the former Seiberling Street Landfill from east of the Seiberling Street roundabout to Massillon Road.
8. ORC Section 3734.02(H) provides, in part, that "[n]o person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or a solid waste facility, was operated without prior authorization from the director, who shall establish a procedure for granting such authorization by rules adopted in accordance with Chapter 119 of the Revised Code."
9. OAC Rule 3745-27-13(A) provides, in part, that "No person shall, without authorization from the director, engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste or solid waste facility was operated."
10. OAC Rule 3745-27-13(H)(6) states, in part, that "No excavation of waste shall occur unless the excavated waste is replaced within previously existing horizontal and vertical limits of waste placement or is treated or disposed of at a licensed, permitted treatment or disposal facility, in accordance with Chapter 3734 of the Revised Code and the regulations promulgated thereunder."
11. ORC Section 3734.02(G) provides, in part, that "The director, by order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes..., in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any...requirements of this chapter."

12. OAC Rule 3745-27-03(B) provides that the Director may, by order, issue an exemption from a requirement of Chapter 3734 of the Revised Code under certain conditions.
13. On June 30, 2011, Akron submitted the Rule 13 Request pursuant to OAC Rule 3745-27-13 to Ohio EPA.
14. The Rule 13 Request describes, in part, Akron's proposed construction activities on the Rule 13 Area for the new roadway and related structures including: excavation and relocation of solid waste; construction of a waste relocation berm, BAT cap over all impacted waste disposal areas, passive gas extraction system, surface water controls, partial perimeter leachate collection system, and an above waste utilities corridor; abandonment of an existing water well; abandonment of a portion of an existing storm sewer; and construction of a new portion of storm sewer to extend from the existing storm sewer as set forth in Exhibit 1 of this Order.
15. The Rule 13 Request seeks authorization for Akron to conduct the construction activities and related work in the Rule 13 Area.
16. Appendix J of the Rule 13 Request includes an exemption request, pursuant to the provisions of ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), from the requirements of OAC Rule 3745-27-13(H)(6). Specifically, in order to reduce the elevation of the waste in the area of the road and related constructions, including the utility trench, Akron has requested authority, and IRG RC 10 has consented, to place solid waste above existing vertical limits of solid waste placement to the south of the proposed road, but within the Rule 13 Area. Akron also seeks authorization, and IRG RC 10 has consented, to construct a waste

relocation berm and green space adjacent to the road by placing the excavated waste in the area south of the proposed road and related constructions.

17. In accordance with OAC Rule 3745-27-13(K) and to ensure that the Rule 13 Area is properly closed during construction under the Rule 13 Request, including waste relocation and the construction of the BAT cap, passive gas extraction system, waste relocation berm, and other engineered components in accordance with the Rule 13 Request and this Order, Akron has prepared financial assurance estimates for closure of the Rule 13 Area as set forth in Appendix K of the Rule 13 Request.
18. Akron has agreed to establish and maintain a financial assurance mechanism for the proposed construction at the Rule 13 Area as set forth in Section IX of this Order, "Financial Assurance." For purposes of providing closure financial assurance under this Order for the Rule 13 Area in accordance with OAC Rules 3745-27-15 and 3745-27-17, Akron is considered to be the Owner and Operator of that portion of the Rule 13 Area owned by Akron, and is considered to be the Operator of that portion of the Rule 13 Area owned by IRG RC 10. By entering into this Order and agreeing to establish and maintain financial assurance as set forth in Section IX of this Order, "Financial Assurance," it is Akron's position that Akron is not admitting that it is the owner or operator of the Seiberling Street Landfill, except for an action by the Ohio EPA to enforce the terms of this Order or the financial assurance mechanism that is established under Section IX of this Order.
19. In accordance with OAC Rule 3745-27-13(K), the Parties to this Order have agreed to execute and record deed notations on their respective ownership

interests of the Rule 13 Area. The deed notations will comply with Section X of this Order, "Land Use and Conveyance of Title."

20. Akron has acquired ownership in an approximately 4.7466-acre portion of the northern half of the Seiberling Street Landfill previously owned by IRG RC 10. When Akron acquired title to the approximately 4.7466-acre portion of the Seiberling Street Landfill, said transfer constituted a "change in ownership" as described in ORC Section 3734.42(F). Akron neither filed a disclosure statement with the Ohio Attorney General at least 180 days prior to the date of the proposed change in ownership as required by ORC Section 3734.42(F), nor timely requested and received an exemption from said requirement prior to the transfer. Akron has communicated through its representatives to Ohio EPA that it is Akron's position that this acquisition did not constitute a "change in ownership" under ORC Section 3734.42(F), and that it is exempt from the requirement to file a disclosure statement pursuant to OAC 109:6-1-02(C)(3).
21. The Director finds that approval of this Order under ORC Section 3734.02(H) and OAC Rule 3745-27-13 to Akron and to IRG RC 10, in order to perform the activities described in the Rule 13 Request, will not result in violation of applicable laws and regulations administered by the Director, will not create a nuisance, and will not adversely affect the public safety or health or the environment, provided that Akron strictly complies with all terms and conditions of this Order, including Exhibit 1.
22. The Director finds that the issuance to Akron and IRG RC 10 of an exemption under ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) from the requirements of OAC Rule 3745-27-13(H)(6) to allow Akron, as the owner and/or operator of the Rule 13 Area, to place solid waste above the vertical limits of

solid waste placement at the Rule 13 Area while performing activities described under Exhibit 1 of this Order is unlikely to adversely affect the public health or safety or the environment, provided that Akron, as the owner and/or operator of the Rule 13 Area, strictly complies with all terms and conditions of this Order, including Exhibit 1.

V. AUTHORIZATION AND ORDERS

A. ORC Section 3734.02(G) and OAC Rule 3745-27-03(B) Exemption

Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), and based on the information included in the Rule 13 Request, Akron and IRG RC 10 are exempted from the requirements under OAC Rule 3745-27-13(H)(6) as they apply to the placement of solid waste above the vertical limits of solid waste placement at the Rule 13 Area during the performance of activities described in this Order, provided that Akron strictly complies with all terms and conditions of this Order. Relocation of waste shall not occur in areas beyond the existing horizontal limits of waste placement within the Rule 13 Area.

B. ORC Section 3734.02(H) and OAC Rule 3745-27-13 Authorization

1. IRG RC 10 as the Owner of a portion of the Rule 13 Area and a signatory to these Orders has consented to the proposed activities on the Rule 13 Area to be conducted by Akron as set forth in this Order and the Rule 13 Request attached as Exhibit 1 and incorporated herein as if fully rewritten. Pursuant to ORC Section 3734.02(H) and OAC Rule 3745-27-13, Akron is hereby granted authority to conduct the proposed activities on the Rule 13 Area in accordance with the Rule 13 Request and this Order. Akron shall comply

with all terms and conditions of this Order, including Exhibit 1, except as provided under Section VII of this Order, "Modifications and Alterations." IRG RC 10 shall comply with the terms and conditions of this Order made expressly applicable to IRG RC 10, unless modified as provided under Section VII of this Order, "Modifications and Alterations."

2. Once construction or any other activities or work commence under this Order, Akron shall perform all activities authorized in the Rule 13 Request no later than three (3) years after the effective date of this Order, except as provided under Section VII of this Order, "Modifications and Alterations".
3. Akron shall perform all construction activities and shall operate and maintain all constructed engineered components or other installed structures, including subsurface structures, in a manner that prevents the accumulation of explosive gas in structures (including subsurface structures) at or above the action level of 25% of the lower explosive limit (1.25% CH₄ v/v) and prevents the accumulation of other landfill gases in structures (including subsurface structures) at levels that are harmful or inimical to human health.
4. Akron shall perform all waste relocation and construction activities and shall operate and maintain all constructed engineered components or other installed structures under this Order in a manner that does not cause the migration of any leachate from the Rule 13 Area.
5. Akron shall perform all activities under this Order in a manner that does not create a nuisance or adversely affect the public safety or health or the environment.

6. Akron shall conduct all activities at the Rule 13 Area in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including but not limited to, the control of air pollution, leachate, and surface water run-on and run-off, and the protection of ground water.
7. Akron shall submit to Ohio EPA Northeast District Office ("NEDO") and the Summit County Health District a construction schedule at least seven (7) days prior to commencing construction or any other activities or work authorized under this Order.
8. Akron shall maintain daily field records documenting dates, times, and specific locations of all construction and related activities, including but not limited to sampling, monitoring, and construction activities occurring at the Rule 13 Area pursuant to this Order.
9. Akron shall cause all liquids, semi-solids, industrial wastes, and other wastes, regulated under ORC Chapter 6111., that are to be removed from the Rule 13 Area to be collected and securely stored in containers until these materials are properly characterized and disposed in accordance with ORC Chapter 6111., the rules promulgated thereunder, and local publicly owned treatment works ("POTW") discharge requirements, if applicable.
10. With respect to the removal of any liquids, semi-solids, industrial wastes, or other wastes regulated under ORC Chapter 6111 from the Rule 13 Area, Akron shall submit copies of sample analysis results required by the receiving treatment or disposal facility, the treatment or disposal method selected, and a letter of acceptance from the treatment or disposal facility to Ohio EPA, NEDO.

11. Akron shall cause all solid wastes, hazardous wastes, or contaminated soil, regulated under ORC Chapter 3734. that are to be removed from the Rule 13 Area to be held in containers and securely stored until they are properly characterized and treated or disposed in accordance with ORC Chapter 3734. and the rules promulgated thereunder.
12. Prior to removal of any solid wastes, hazardous wastes, or contaminated soil regulated under ORC Chapter 3734. from the Rule 13 Area, Akron shall submit copies of sample analysis results, the treatment or disposal method selected, and a letter of acceptance from the treatment or disposal facility to Ohio EPA, NEDO in accordance with OAC Rule 3745-27-13(H)(4).
13. Akron shall submit weekly progress reports to Ohio EPA, NEDO and the Summit County Health District while conducting the activities authorized pursuant to this Order. The weekly progress reports may be submitted by e-mail. The reports shall be submitted on Monday and shall report on work performed during the seven (7) day period ending with the prior Monday. The weekly progress reports shall provide a detailed description of activities undertaken during the previous week, including, but not limited to, the following information:
 - a. The volume of waste excavated at the Rule 13 Area;
 - b. The location(s) within the existing horizontal limits of waste placement of the Rule 13 Area from which the excavated waste was moved;
 - c. The volume and type of any waste that is removed from the Rule 13 Area for off-site disposal and all associated analytical data;

- d. The approximate volume of waste, if any, that was relocated during the reporting period and the approximate upper elevation of the waste relocated within the waste relocation area, as of the end of the reporting period, along with a description of the compaction equipment utilized;
- e. Location and quantities of all soil stockpiles to be used, including for daily or intermediate cover;
- f. Plan drawings for the roadway construction and waste relocation area. The following shall be identified: the locations where waste was excavated and relocated, current active working areas, areas where final waste grades have been achieved, and areas where waste has been covered or capped;
- g. Descriptions for the roadway construction and waste relocation area. The following shall be identified: the lift thickness of compacted waste, the compaction equipment, the thickness of cover, the cap material, and methods utilized;
- h. Description of any engineered components or other structures installed during the construction activities;
- i. The implementation, if any, of any contingency plans to address leachate, odors, gas, dust, erosion, suspected hazardous waste or infectious waste, fires, or surface water management;
- j. Leachate reports, as required by the receiving facility, including the amount and location of leachate disposed;

- k. Complaints received about dust, odors, leachate, surface water run-on or run-off, blowing litter, or vectors, and the response action taken to address the complaints.
14. If excavation occurs outside the limits of waste placement at the Rule 13 Area, Akron shall use only clean soil to backfill the excavated areas and may not use any type of waste material, including but not limited to construction and demolition debris, solid waste, or hazardous waste, to backfill the excavated areas outside the limits of waste placement at the Rule 13 Area.
15. Akron shall ensure that excavated waste from the Rule 13 Area is relocated within the previously existing horizontal limits of waste placement of the Rule 13 Area, in accordance with the exemption granted above, or is removed from the existing horizontal and vertical limits of waste placement and containerized (e.g. roll-off, drums) and securely stored until these materials are properly characterized and disposed in accordance with ORC Chapter 3734., ORC Chapter 6111., OAC Rule 3745-27-13(H)(6), and the Rule 13 Request.
16. In no event shall solid waste be placed at any elevation lower than the existing bottom waste elevations at any given location at the Rule 13 Area, in accordance with OAC Rule 3745-27-13(H)(6).
17. Akron shall submit, for concurrence, certification reports to Ohio EPA, NEDO, which shall be prepared under the supervision of, signed by, and sealed by a professional engineer registered in the state of Ohio. The certification report(s) shall at a minimum be submitted for the engineered components listed in Order 17(d)(iii), and shall contain the following information:

- a. A narrative section that identifies the engineered component or other structure that was constructed or installed and includes the following:
 - i. A summary of the design and construction specifications provided for in the Rule 13 Request and a comparison with the engineered component or other structure that was constructed or installed;
 - ii. A summary of how construction or installation was impacted by weather and equipment limitations and a description of other difficulties encountered;
- b. All alterations or other changes that relate to the construction or installation of the engineered components or structures to be certified, presented as follows:
 - i. A list of all alterations that were previously concurred with by Ohio EPA;
 - ii. A list of any other changes made by Akron that do not require Ohio EPA concurrence but which affected construction or installation, or the record drawings;
- c. Results of all testing required in the Rule 13 Request for the construction or installation of the engineered component or other structure. If the results of pre-construction testing of borrow soils were submitted in a format that is acceptable to Ohio EPA, then only summary tables of data need to be included in the construction certification report;

- d. Record drawings of the constructed or installed engineered components or other structures showing the following:
 - i. Plan views with topographic representation showing the elevations of the following:
 - a) Top of waste grades;
 - b) Top of recompacted soil barrier layer or geosynthetic clay liner;
 - c) Top of protective cover;
 - d) Top of vegetative cover layer;
 - ii. Cross sections of the facility, as constructed, at 200 foot intervals;
 - iii. Detail plan drawings of engineered components and other structures as included in the Rule 13 Request, including, at a minimum:
 - a) The leachate collection system;
 - b) The passive gas collection system;
 - c) The BAT cap system, including anchor trench;
 - d) The utility trench;
 - e) Utility lateral tie-ins, including the berm;
 - f) The roadway;
 - g) Surface water controls; and
 - h) Sewer Improvements
- e. Upon completion of construction activities under this Order, Akron shall submit to Ohio EPA an as-built slope stability analysis of the roadway excavation and waste relocation berm utilizing the as-built final elevations if there is any change in the underlying assumptions from those included

in the Rule 13 Request, such as compaction, material characteristics, or final elevations.

- f. Qualifications of testing personnel. A description of the experience, training, responsibilities in decision making, and other qualifications of the personnel that provided construction oversight and conducted all the testing on the engineered components or other structures for which the certification report is submitted.

Akron shall submit the certification reports required by this paragraph and OAC Rule 3745-27-13(H)(10) no later than sixty (60) days after the completion of all construction required under the Rule 13 Request. Nothing herein prevents Akron from submitting required certification reports for one or more engineered components prior to the deadline set forth in this paragraph, however, no more than 6 certification reports shall be submitted to Ohio EPA for the construction activities authorized under this Order.

18. Akron shall provide in each certification report submitted under this Order a notarized statement that states, "To the best of the knowledge of the City of Akron and its contractors and representatives, the certification report is true and accurate and contains all information required in accordance with the Authorization and Exemption Order and the Quality Assurance/Quality Control plan as included in the Rule 13 Request."
19. Akron is not authorized to commence, and shall not commence, utility or roadway construction within the limits of the BAT cap on the Rule 13 Area until the construction certification report(s) for installation of the BAT cap and passive gas extraction system underneath the entire roadway, as designed in the Rule 13 Request, are submitted by Akron and written concurrence for the

BAT cap and passive gas extraction system certification report(s) is issued by Ohio EPA for said report(s).

20. Akron shall implement odor controls as described in the Waste Relocation Plan included in Appendix C of the Rule 13 Request and shall not allow conditions at the Rule 13 Area to create a nuisance in violation of this Order and OAC Rule 3745-27-13(J).
21. While conducting work within the Rule 13 Area, Akron shall implement explosive gas monitoring activities as necessary to comply with applicable laws, to address changing conditions at the Rule 13 Area which result in a threat to human health or safety from explosive gas, and in response to requests by Ohio EPA or the Summit County Health District based on such situations.
22. Construction activities within the Rule 13 Area shall comply with the applicable requirements of Ohio EPA's General Storm Water Permit for Construction Activities.
23. Akron shall apply a minimum six-inch-thick layer of soil cover or other alternative daily cover material acceptable to Ohio EPA to all exposed solid waste by the end of the working day to control fire hazards, blowing litter, odors, insects, vectors, and rodents.
24. Akron shall apply intermediate soil cover in accordance with the Rule 13 Request. The intermediate cover shall be stabilized in accordance with Best Management Practices standards.

25. Akron shall not use nontoxic bottom ash, foundry sand, or other exempted wastes at the Rule 13 Area without receiving appropriate written authorization from Ohio EPA.
26. Any soil boring, test pit, or well installation, development or abandonment shall, at a minimum, conform to Ohio EPA's *Technical Guidance Manual for Hydrogeologic Investigations and Ground Water Monitoring* (Ohio EPA DDAGW, February, 1995).
27. This Order provides authorization for Akron to conduct only those activities included in Exhibit 1 and the subsequent revisions as authorized herein. Akron shall conduct no other filling, grading, excavating, building, drilling, or mining at the Rule 13 Area or the Seiberling Street Landfill without prior written approval from Ohio EPA in accordance with ORC Section 3734.02 and OAC Rule 3745-27-13.
28. The Parties agree that with respect to any conflict that may arise between the language of this Order and its Exhibit 1 - the Rule 13 Request, that the language of the Order shall prevail unless otherwise expressly provided by Ohio EPA in writing.
29. This Order does not authorize Akron or IRG RC 10 to accept hazardous, solid, or liquid wastes for disposal or for construction purposes at the Rule 13 Area.
30. The activities approved pursuant to this Order do not include construction of occupied buildings of any type at the Rule 13 Area.

31. The post closure care in the Rule 13 Area shall be completed in accordance with the same time frame as the remainder of the Seiberling Street Landfill.
32. In accordance with OAC Rule 3745-27-13(M), authorization to commence the activities specified above shall terminate 3 years after the effective date of this Order if Akron has not begun the activities authorized herein.
33. Nothing in this Order shall be construed to authorize any waiver from any requirements of applicable state solid waste laws or regulations in accordance with OAC Rule 3745-27-13(H)(5), except as provided herein. This approval shall not be interpreted to release IRG RC 10, Akron, or its contractors, subcontractors, consultants, or others retained to perform the construction or any other activities or work pursuant to this Order from responsibility under ORC Chapters 3704., 3714., 3734., or 6111.; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.
34. The Director may revoke this Order if Akron or IRG RC 10 violates, or is likely to violate, any applicable law related to the Rule 13 Area or these Orders, or if the continued implementation of the work provided for in the Rule 13 Request causes or may cause a threat to human health or safety or the environment, or if Akron or IRG RC 10 fails to comply with any applicable term or condition of this Order.

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be taken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in this Order shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Akron's activities, IRG RC 10's activities, and/or the Rule 13 Area.

VII. MODIFICATIONS AND ALTERATIONS

This Order may be modified or altered by agreement of the parties hereto. Modifications to this Order shall be by agreement of the parties in the form of Director's Authorization and Exemption Order, or Final Findings and Orders, and shall be effective on the date entered in the journal of the Director of Ohio EPA. A "modification" for purposes of this Section shall be defined to mean a change to the language of this Order, but shall not include changes to the language of Exhibit 1. For purposes of this Section, any change to the language of Exhibit 1 shall be defined to be an "alteration." All alterations to Exhibit 1 shall be made by agreement of the parties in the form of a letter signed by representatives from Ohio EPA authorizing the alteration or through other means authorized by Ohio EPA.

VIII. NOTICE

All documents required to be submitted by Akron or IRG RC 10 pursuant to this Order shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road

Twinsburg, Ohio 44087

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

All documents required to be issued by Ohio EPA, pursuant to this Order or the Activities authorized in Exhibit 1 shall be addressed to:

The City of Akron - Akron Engineering Bureau
Attn: Ralph Coletta, P.E., City Engineer
166 South High Street, Room 701
Akron, Ohio 44308

and

IRG RC 10 LLC
Attention: Debra A. Harrell
12214 Lakewood Blvd.
Downey, California 90242

IX. FINANCIAL ASSURANCE

1. Pursuant to OAC Rule 3745-27-13(K) and this Order, no later than 14 days prior to the commencement of construction or any other activities or work pursuant to this Order, including the Rule 13 Request, Akron shall submit to Ohio EPA an executed and funded financial assurance instrument in the form of a trust agreement, a letter of credit, or surety bond meeting the requirements of OAC Rules 3745-27-15(F), 15(G), 15(H), or 15(I) and 3745-27-17 for the cost to re-

establish closure of the Rule 13 Area of the Seiberling Street Landfill in the amount of \$2,474,370, as estimated in Appendix K of the Rule 13 Request.

2. The financial assurance instrument, in the form of a trust agreement, a letter of credit, or surety bond required by Paragraph 1, above, of this Section, "Financial Assurance," shall be maintained by Akron for the full amount of the total closure cost estimate in Appendix K of the Rule 13 Request until all of the construction and installation activities and related work authorized in this Order have been completed, and have been certified and concurred with by Ohio EPA in accordance with Paragraph 17, Section V, "Authorization and Exemption Order." Akron shall not reduce the amount of the financial assurance instrument required by Paragraph 1 of this Section unless otherwise approved by the Director of Ohio EPA in writing.

3. Except as provided in this Order, Akron shall comply with the requirements of OAC Rules 3745-27-15 through 3745-27-17 notwithstanding any claimed argument that such rules are not legally applicable to the Rule 13 Area of the Seiberling Street Landfill or to Akron's activities on the Rule 13 Area of the Seiberling Street Landfill. Solely for purposes of establishing and maintaining the financial assurance mechanism under this Order, Akron shall be deemed the "operator" of the Seiberling Street Landfill as it pertains to that portion of the Rule 13 Area owned by IRG RC 10, and will be responsible for fully funding and maintaining the financial assurance mechanism for closure of the entire Rule 13 Area of the Seiberling Street Landfill until the work authorized under this Order is completed and certified in accordance with paragraph 17, Section V, "Authorization and Exemption Order", and OAC Rule 3745-27-13(H). The Parties further agree that "closure", as used in OAC Rules 3745-27-15 and 3745-27-17, shall be interpreted such that Ohio EPA is authorized to use the financial assurance required by this Order for any activities associated with closure of the

Rule 13 Area on the Seiberling Street Landfill and/or activities necessary to protect human health or safety or the environment at the Rule 13 Area, including the storm sewer and culvert work being conducted immediately adjacent to the Rule 13 Area and over Haley's ditch. Ohio EPA may draw on the financial assurance required by this Order and use the funds drawn for any of the reasons described above when any of the grounds set forth in OAC Rules 3745-27-15 and OAC 3745-27-17 for drawing on the financial assurance have been met, or because Akron has violated any of the provisions of this Order.

X. LAND USE AND CONVEYANCE OF TITLE

1. Before commencing construction of the road as authorized under this Order, Akron and IRG RC 10 shall record a notice on the deed for their respective portions of the property comprising the Rule 13 Area with the County Recorder's Office for Summit County, Ohio. The notice shall reference the presence of a solid waste landfill on the property and the existence of this Order and shall contain the following statement:

"Ohio EPA issued authorization under ORC Section 3734.02(H) and OAC Rule 3745-27-13 to the City of Akron and IRG RC 10 LLC in the Director's Authorization and Exemption Order issued on November __ of 2011, to conduct activities at the landfill located on the property subject to this notice. Ohio EPA's review of the City of Akron's request for authorization under OAC Rule 3745-27-13 was limited to whether the activities authorized within the Rule 13 Area of the Seiberling Street Landfill could result in the release of contaminants or the formation and migration of explosive gas that might be harmful to human health, safety, or the environment. Because Ohio EPA's review was limited to these issues, Ohio EPA makes no representation that the property subject to this notice, if developed for any purpose,

including but not limited to commercial and/or industrial development will be suitable for such purposes."

2. A copy of the recorded deed notice shall be submitted to Ohio EPA not later than seven (7) days after recording the deed notice. If Akron or IRG RC 10 conveys any interest in their respective properties comprising the Rule 13 Area, each deed, title, or other instrument shall contain a notice stating that the property is subject to this Order and shall contain the following notice:

"Ohio EPA issued authorization under ORC Section 3734.02(H) and OAC Rule 3745-27-13 to the City of Akron and IRG RC 10 LLC in the Director's Authorization and Exemption Order issued on November __ of 2011, to conduct activities at the landfill located on the property subject to this notice. Ohio EPA's review of the City of Akron's request for authorization under OAC Rule 3745-27-13 was limited to whether the activities authorized within the Rule 13 Area of the Seiberling Street Landfill could result in the release of contaminants or the formation and migration of explosive gas that might be harmful to human health, safety, or the environment. Because Ohio EPA's review was limited to these issues, Ohio EPA makes no representation that the property subject to this notice, if developed for any purpose, including but not limited to commercial and/or industrial development, will be suitable for such purposes."

XI. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of this Order or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Akron or IRG RC 10 for noncompliance with this Order. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful

authority to require Akron or IRG RC 10 to perform additional activities pursuant to ORC Chapters 3734, 6111, or any other applicable law in the future. Nothing herein shall restrict the right of Akron or IRG RC 10 to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Akron or IRG RC 10. Nothing in this Order shall be construed to limit the authority of Ohio EPA to seek relief for violations that may occur at the Rule 13 Area and/or the Seiberling Street Landfill facility.

XII. AGREEMENT NOT TO SUE

Akron and IRG RC 10 agree not to sue the State of Ohio for any and all claims or causes of action arising from, or related to, any work performed pursuant to these Orders.

XIII. WAIVER

Akron and IRG RC 10 consent to the issuance of this Order and agree to comply with their respective obligations under this Order. Compliance with this Order shall be a full accord and satisfaction of Akron's liability for matters described in paragraph 20 of Section IV of this Order, "Findings of Fact." Akron and IRG RC 10 hereby waive the right to appeal the issuance, terms and conditions, and service of this Order, and Akron and IRG RC 10 hereby respectively waive any and all rights Akron and IRG RC 10 may have to seek administrative or judicial review of this Order either in law or equity. Notwithstanding the preceding, Ohio EPA, Akron, and IRG RC 10 agree that if this Order is appealed by any other party to the Environmental Review Appeals Commission, or any court, Akron and IRG RC 10, respectively, retain the right to intervene and participate in such appeal. In such an event, Akron and IRG RC 10 shall continue to comply with this Order notwithstanding such appeal and intervention unless this Order is stayed, vacated, or modified.

XIV. TERMINATION

Except for the requirements of Section XII, "Agreement Not to Sue" of this Order which shall survive the termination of the requirements of this Order, Akron's obligations and IRG RC 10's obligations, respectively, under this Order shall terminate when Akron has certified in writing and demonstrated to the satisfaction of Ohio EPA that Akron and IRG RC 10 have performed all their respective obligations under this Order and the Chief of Ohio EPA's Division of Materials and Waste Management, or its successor, acknowledges in writing the termination of Akron's and IRG RC 10's obligations under this Order. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Akron and IRG RC 10 of their respective obligations that have not been performed, in which case Akron and IRG RC 10 shall have an opportunity to address any such deficiencies and seek termination as described above. Akron's certification shall contain the following attestation: "To the best of the knowledge of the City of Akron and its contractors and representatives, the certification report is true and accurate and contains all information required in accordance with the Authorization and Exemption Order and the Quality Assurance/Quality Control Plan as included in the Rule 13 Request." The certification shall be signed by a responsible official of the City of Akron. For purposes of this Order, a responsible official is the Mayor or City Engineer for the City of Akron.

XV. ACCESS

Ohio EPA or its authorized representatives shall have access at all reasonable times, including during business hours, to the Rule 13 Area and any other property to which access is required for the implementation of this Order, to the extent access to the property is controlled by Akron or IRG RC 10. Access under this Order shall be for the purposes of conducting any activity related to this Order including but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Monitoring compliance with use restrictions;
- e. Conducting investigations and tests related to the implementation of these Orders;
- f. Verifying any data and/or other information submitted to Ohio EPA; and
- g. Performing closure work on the Facility as required under OAC 3745-27-11 and 3745-27-13(H)(9) and this Order through use of the financial assurance provided herein. To the extent Ohio EPA and its contractors perform closure work at the Rule 13 Area, Akron and IRG RC 10 agree to provide Ohio EPA with access to any soils stockpiled on site for use in such work.

To the extent that the Rule 13 Area or any other property to which access is required for the implementation of this Order is owned or controlled by persons other than Akron or IRG RC 10, Akron and IRG RC 10 shall use their best efforts to secure from such persons access for Akron, IRG RC 10, and Ohio EPA as necessary to effectuate this Order. Copies of all access agreements obtained by Akron or IRG RC 10 shall be provided to Ohio EPA upon request. If any access required to implement this Order is not obtained within thirty (30) days of the effective date of this Order, or within thirty (30) days of the date Ohio EPA notifies Akron and/or IRG RC 10, in writing, that additional access beyond that previously secured is necessary, Akron and IRG RC 10, as applicable, shall promptly notify Ohio EPA in writing of the steps Akron and/or IRG RC 10 have taken to attempt to obtain access. Ohio EPA may, as it deems appropriate, assist Akron and IRG RC 10 in obtaining access.

Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations, including but not limited to ORC Sections 3734.20 and 6111.05.

XVI. EFFECTIVE DATE

The effective date of this Order is the date this Order is entered into the Ohio EPA Director's Journal.

XVII. SIGNATORY AUTHORITY

Each undersigned representative of a party to this Order certifies that he or she is fully authorized to enter into this Order and to legally bind such party to this Order.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



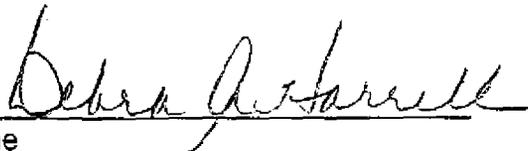
Scott J. Nally
Director

NOV 30 2011

Date

IT IS SO AGREED:

IRG RC 10 LLC

By: 

Name

11/16/11

Date

AUTHORIZED AGENT

Title

IT IS SO AGREED:

City of Akron

By: *John W. Valle* *John W. Valle* 11-17-11
for Name Richard A. Mesoliti Date
Director of Public Service
Title

Approved as to form and correctness:

By: *Cheri B. Cunningham* 11-28-11
Cheri B. Cunningham *sm* Date
Director of Law, City of Akron

Director's Authorization and Exemption Orders
City of Akron – Seiberling Landfill Rule 27-13 Development
Akron, Summit County, Ohio

Exhibit A

City of Akron

Rule 13 Request

Director's Authorization and Exemption Orders
City of Akron – Seiberling Landfill Rule 27-13 Development
Akron, Summit County, Ohio

Exhibit B

Rule 13 Area

Legal Description and Drawing

LEGAL DESCRIPTION OF: Rule 13 Limits - Overall

Being part of a parcel of land located in the City of Akron, County of Summit, and State of Ohio, located also in Lot B of Tract 3, of Original Springfield Township lying in Township 1, Range 10 of the Connecticut Western Reserve, being also part of a parcel of land now, or formerly owned by IRG RC 10 LLC per Reception Number 55626988 and a part of a dedicated road right of way of Seiberling Way per Reception Number 55739754 of the Summit County Records, and being more fully described as follows:

Commencing at a point at the intersection of the centerline of construction of Massillon Road (State Route 241) and the centerline of construction of Seiberling way;

Thence S 89°59'20" W, 146.52 feet, along the centerline of construction of Seiberling Way, to a point of curvature;

Thence 100.05 feet, along the arc of a curve to the left, said curve having a radius of 381.97 feet and a chord which bears S 82°29'08" W, 99.76 feet, to a point of tangency;

Thence S 74°58'55" W, 56.82 feet, along the centerline of construction of Seiberling Way, to a point, said point also being the **TRUE POINT OF BEGINNING** for the following parcel herein described;

Thence, S 04° 58' 55" W , 96.31 feet to a point;

Thence, N 85° 01' 05" W , 45.90 feet to a point;

Thence, S 03° 38' 38" W , 62.20 feet to a point;

Thence, S 83° 27' 53" W , 210.58 feet to a point;

Thence, S 08° 46' 14" W , 136.57 feet to a point;

Thence, S 23° 03' 20" W , 160.16 feet to a point;

Thence, S 16° 46' 09" W , 161.79 feet to a point;

Thence, S 86° 10' 30" W , 79.53 feet to a point;

Thence, S 47° 36' 12" W , 98.96 feet to a point;

Thence, N 82° 24' 04" W , 223.44 feet to a point;

Thence, N 16° 06' 26" W , 121.21 feet to a point;

Thence, N 01° 11' 05" W , 142.93 feet to a point;

Thence, N 15° 45' 55" E , 185.08 feet to a point;

Thence, N 05° 36' 30" E , 56.85 feet to a point;

Thence, N 68° 58' 43" W , 43.76 feet to a point;
Thence, S 88° 35' 40" W , 61.25 feet to a point;
Thence, N 50° 12' 16" W , 82.22 feet to a point;
Thence, N 05° 39' 52" W , 143.67 feet to a point;
Thence, N 50° 44' 41" W , 68.25 feet to a point;
Thence, N 24° 38' 48" W , 120.28 feet to a point;
Thence, N 60° 17' 31" E , 175.54 feet to a point;
Thence, S 58° 35' 57" E , 241.65 feet to a point;
Thence, S 73° 30' 39" E , 263.54 feet to a point;
Thence, N 81° 53' 56" E , 139.57 feet to a point;
Thence, S 88° 17' 37" E , 126.54 feet to a point;
Thence, N 77° 52' 26" E , 120.97 feet to a point;
Thence S 03° 38' 38" W a distance of 42.70 feet to a point;
Thence, S 85° 01' 05" E , 50.01 feet to a point on a line

Thence, S 04° 58' 55" W , 50.01 feet, to the POINT OF BEGINNING, and containing **11.814 acres** (514,618.48 square feet) of land, more or less, as described by Dan Stankavich, Professional Surveyor No. 7122, for the URS Corporation on October 18, 2011.

Bearings based on the centerline bearing of Seiberling Way per dedication plat filed as Reception Number 55769754.

The above description is based on record and calculated information only and is not intended to be used for a fee transfer of ownership.



Dan Stankavich, P.S. 7122



OCT 18, 2011

Date

