Ohio | Environmental Protection Agency

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

November 21, 2011

Henry L. Bowling
Old River Valley Place of Nature Foundation
125 Hermay Drive
Hamilton, Ohio 45013

Don Hershner
3653 Oxford Millville Road
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 November 9, 2011, Sara Anderson and I, representing Ohio EPA's Southwest District Office (SWDO), conducted a comprehensive inspection of the Schlichter C&DD Landfill (Schlichter Landfill) located in Butler County.

In 2010, Schlichter Landfill was evaluated and selected for a limited scope of work and activities to be completed and funded under the CLOSER program. Selection for the CLOSER program includes a comprehensive evaluation and scoring of the site using a hazard ranking system. Ohio EPA issued notice-to-proceed letters to the selected contractor RB Jergens dated August 24, 2010, September 20, 2010 and September 15, 2011, to commence site repair activities at the Schlichter Landfill. To date, the following activities have been performed: vegetation removal, waste consolidation, stabilization, erosion control, soil placement, seeding, ground water monitoring well repair, and mowing.

Summary of Work Performed by RB Jergens as authorized by Ohio EPA

1. Mowing was conducted on the municipal solid waste and C&DD disposal areas to promote re-seeding of the grass that was planted during the fall of 2010. Ohio EPA recommends mowing, at a minimum, annually to prevent tree establishment on the cover and to promote re-seeding. Tall weeds and wooded plants on the cover system can impede visibility during an inspection, mowing needs to be done prior to an inspection to make the cover more visible.

2. Monitoring well MW-6 was re-painted and the individual well identification number was clearly labeled on the outer casing of the ground water monitoring well.

Southwest District Office
401 East Fifth Street
Dayton, OH 45402-2911

937 | 285 6357
937 | 285 6249 (fax)
www.epa.ohio.gov

3. On-site stockpiled soils from the northern perimeter of the pond were made available to Ohio EPA in accordance with Order No.10 by the Foundation and used as cover material along the debris disposal areas.

4. Small erosion areas on the municipal solid waste and C&DD disposal areas were repaired, covered with approximately six (6) inches of on-site stockpiled soil, and seeded.

5. Roadways were repaired to promote drainage and passage along the site.

The purpose of the November 9, 2011 inspection was to determine compliance with applicable closure regulations and the requirements set forth in the Agreed Order for Judgment (Order) between the State of Ohio "Ohio EPA" and Old River Valley Place of Nature Foundation "Foundation" the owner of the Schlichter Landfill filed in Butler County Court of Common Pleas dated March 9, 2007.

Site Observations/On-going compliance issues:

The following conditions continue to be in violation of Ohio's C&DD regulations and the Order dated March 9, 2007.

1. The Director's Final Findings & Orders for the Old River Valley Place of Nature Foundation effective December 31, 2002 have not been satisfied and the ground water assessment monitoring has not been initiated.

2. Closure activities were not observed. As stated in previous correspondences, 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 C&DD disposal area. The fly ash area continues to have erosion issues exposing the waste beneath it.

Please be aware that the work activities conducted by Ohio EPA do not relieve the responsibility of the Foundation as the owner/operator of the Schlichter Landfill. It is the Foundation's responsibility to continue maintenance, repair and abatement of all violations.

Summary of Noncompliance with Judgment Order of March 9, 2007

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

1. *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".*

As of November 21, 2011, the Foundation has not performed closure of the facility in accordance with Ohio Administrative Code Rule 3745-27-11 as required by Order No. 5. The Foundation is in violation of Order No. 5 for failure to perform closure of the landfill.

2. *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 November 21, 2011, 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 the Foundation in violation of Order No. 7.

3. *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 November 21, 2011, the Foundation has failed to provide the additional income tax information that was noted on the income tax statements by the CPA to Plaintiff State of Ohio for years 2007 through 2010, 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.

4. *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 November 21, 2011, the Foundation has failed to provide a report to Plaintiff State of Ohio of all receipts and expenditures for years 2007 through 2010, to include a purpose for the expenditures for the Schlichter Landfill in violation of Order No. 11.

Work and maintenance activities performed by Ohio EPA and its contractor, as authorized by Section 3734.281 of the Ohio Revised Code, at Schlichter C&DD Landfill were conducted for the sole purpose of remediating conditions that posed a substantial threat to public health or safety or the environment. Attaining compliance with the requirements outlined in this letter shall not relieve you of your obligation to comply with applicable closure requirements, orders, judgments, and other legal obligations including, but not limited to, Chapters 3704, 3714, 3734, or 6111. of the Ohio Revised Code or the Federal Clean Water Act, Clean Air Act, Comprehensive Environmental Response, Compensation, and Liability Act, or Resource Conservation and Recovery Act for remedying conditions resulting from any release of contaminants to the environment.

**Ohio EPA recommends mowing vegetation at the site to promote reseeding and prevent tree establishment on the cover.**

**Abatement of the aforementioned violations is 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.

Maria Lammers, R.S.
Environmental Specialist II
Division of Materials and Waste Management

ML/tf

ec: Carl Mussenden, Ohio EPA, DMWM-CMEU
Connie Livchak, Ohio EPA, DMWM, Central Office
John Cayton, AGO