

OHIO E.P.A.

APR 29 2013

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Apex Environmental, LLC  
11 County Road 78,  
Amsterdam, Ohio 43903

:  
:  
:

Director's Final  
Findings and Orders

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Apex Environmental, LLC (hereinafter "Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent, its assigns, and successors in interest liable under Ohio law. No change in ownership of the Facility as hereinafter defined shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise expressly stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA makes the following findings:

1. Apex Sanitary Landfill and Apex Transfer Facility are located at 11 County Road 78, Amsterdam, Jefferson County, and 53002 High Ridge Rd, Bridgeport, Ohio.
2. Apex Sanitary Landfill (the "Disposal Facility") is a "Facility" as that term is defined under ORC Section 3734.01(N), a "sanitary landfill facility" as defined under OAC Rule 3745-27-01(S)(4) and a "solid waste disposal facility" as defined under OAC Rule 3745-27-01(S)(24).
3. The Disposal Facility is authorized to accept and dispose of "solid waste" as that term is defined in ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

4. Apex Transfer Facility (the "Transfer Facility") is a "solid waste transfer facility" as that term is defined under ORC Section 3734.01(U) and OAC Rule 3745-27-01(S)(28).
5. Respondent is the license holder and "permittee" as that term is defined in OAC Rule 3745-27-01(P)(2) for the Transfer Facility and the Disposal Facility.
6. Respondent is the "owner" or "operator" of the Disposal Facility and Transfer Facility as those terms are defined in OAC Rule 3745-27-01(O)(7) and Rule 3745-27-01(O)(5).
7. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
8. ORC 3734.57(A) provides in relevant part: "The owner or operator of a solid waste transfer facility or disposal facility, as applicable, shall prepare and file with the director of environmental protection each month a return indicating the total tonnage of solid wastes received at the facility during that month and the total amount of the fees required to be collected under this division during that month. In addition, the owner or operator of a solid waste disposal facility shall indicate on the return the total tonnage of solid wastes received from transfer facilities located in this state during that month for which the fees were required to be collected by the transfer facilities. The monthly returns shall be filed on a form prescribed by the director. Not later than thirty days after the last day of the month to which a return applies, the owner or operator shall mail to the director the return for that month together with the fees required to be collected under this division during that month as indicated on the return or may submit the return and fees electronically in a manner approved by the director. If the return is filed and the amount of the fees due is paid in a timely manner as required in this division, the owner or operator may retain a discount of three-fourths of one per cent of the total amount of the fees that are required to be paid as indicated on the return."
9. ORC 3734.57(A) provides in relevant part: "If the fees are not remitted within thirty days after the last day of the month to which the return applies or are not remitted by the last day of an extension approved by the director, the owner or operator shall not retain the three-fourths of one per cent discount and shall pay an additional ten per cent of the amount of the fees for each month that they are late. For purposes of calculating the late fee, the first month in which fees are late begins on the first day after the deadline has passed for timely submitting the return and fees, and one additional month shall be counted every thirty days thereafter."
10. On December 21, 2012, Ohio EPA sent Respondent a Notice of Violation ("NOV") letter for Failure to remit disposal fees and late fees in violation of Ohio Revised Code (ORC) Section 3734.57(A). On December 21, 2012, Ohio EPA indicated that as of December 12, 2012, the amount owed for disposal and late fees for the Apex Sanitary Landfill Disposal Facility for the months of April, May,

August, September and October of 2012, and for the Apex Transfer Facility for the months of August, September, and October of 2012 totaled approximately two million twenty-six thousand four hundred sixteen dollars (\$2,026,416).

#### V. ORDERS

Respondent shall achieve compliance with ORC Chapter 3734, and the rules promulgated thereunder according to the following compliance schedule:

1. Respondent shall remit to Ohio EPA the amount of one million five hundred fifty-one thousand six hundred eighty-eight dollars and sixty-seven cents (\$1,551,688.67) to satisfy the outstanding total principal assessed on solid waste disposal fees for the Disposal Facility for the months of April, May, August, September and October of 2012 in accordance with ORC Section 3734.57, pursuant to the following compliance schedule:
  - a) Not later than April 30, 2013, Respondent shall pay two hundred fifty-eight thousand six hundred fourteen dollars and seventy-eight cents (\$258,614.78) to Ohio EPA of the total amount due in Order No. 1.
  - b) Not later than May 15, 2013, and not later than the fifteenth day of the month for three (3) consecutive months thereafter, Respondent shall pay two hundred fifty-eight thousand six hundred fourteen dollars and seventy-eight cents (\$258,614.78) to Ohio EPA of the total amount due in Order No. 1.
  - c) Not later than September 15, 2013, Respondent shall pay two hundred fifty-eight thousand six hundred fourteen dollars and seventy-seven cents (\$258,614.77) to Ohio EPA of the total amount due in Order No. 1.
  - d) Each payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the appropriate amounts specified under Orders No. 1(a) – 1(c). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Disposal Facility. A photocopy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
2. Respondent shall pay to Ohio EPA the total amount of four hundred eighty-seven thousand seven hundred forty-one dollars and forty-four cents (\$487,741.44) for late payments of monthly solid waste disposal fees for the months of April, May, August, September and October of 2012 for the Disposal Facility, which may be assessed in accordance with ORC Chapter 3734, pursuant to the following compliance schedule:
  - a) Not later than October 15, 2013, and not later than the fifteenth day of the month for five (5) consecutive months thereafter Respondent shall pay the amount of eighty-one thousand two hundred ninety dollars and twenty-four

cents (\$81,290.24) of the total amount due in Order No. 2. Nothing in this provision shall be construed to prevent Respondent from accelerating the payment of the total amount due for late fees in Order No. 2.

- b) Each payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the appropriate amount specified under Order No. 2(a). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Disposal Facility. A photocopy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
3. Respondent shall remit to Ohio EPA the amount of forty-six thousand twenty-seven dollars and eighty cents (\$46,027.80) to satisfy the outstanding total principal assessed on solid waste disposal fees for the Transfer Facility for the months of August, September, and October of 2012 in accordance with ORC Section 3734.57, pursuant to the following compliance schedule:
    - a) Not later than April 30, 2013, Respondent shall pay seven thousand six hundred seventy-one dollars and thirty cents (\$7,671.30) to Ohio EPA of the total amount due in Order No. 1.
    - b) Not later than May 15, 2013, and not later than the fifteenth day of the month for four (4) consecutive months thereafter, Respondent shall pay seven thousand six hundred seventy-one dollars and thirty cents (\$7,671.30) to Ohio EPA of the total amount due in Order No. 1.
    - c) Each payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the appropriate amounts specified under Orders No. 3(a) – 3(b). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Disposal Facility. A photocopy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
  4. Not later than October 15, 2013, Respondent shall remit to Ohio EPA the amount of twelve thousand two hundred fifty-eight dollars and fifty-seven cents (\$12,258.57) for late payments of monthly disposal fees for the months of August, September, and October of 2012 for the Transfer Facility, in accordance with ORC Chapter 3734. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for twelve thousand two hundred fifty-eight dollars and fifty-seven cents (\$12,258.57). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Transfer Facility. A photocopy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and

Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

*(See Attachment A for a summary of the payment schedule for payments required by the above Orders).*

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent makes timely payments of all the amounts set forth in Section V above.

#### **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 Respondent's 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 Respondent 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.

#### **X. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders. The Director specifically reserves his rights to include all violations dating back to the original failure to pay fees for the months of April, May, August, September and October of 2012 identified in these Orders in any enforcement action that the State may bring should Respondent fail to pay in accordance with the compliance schedule contained herein to resolve violations of Ohio's Solid Waste Laws and Regulations.

## **XI. 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein with regard to the months of April, May, August, September and October of 2012 contingent upon Respondent remaining current with payments required by these Orders.

The Director specifically reserves his rights to include all violations dating back to the original failure to pay fees for the months of April, May, August, September and October of 2012 as identified in these Orders in any enforcement action that the State may bring should Respondent fail to pay in accordance with the compliance schedule contained herein to resolve violations of Ohio's Solid Waste Laws and Regulations.

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

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

## **XII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIII. 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**



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Scott J. Nally  
Director

IT IS SO AGREED:

Apex Environmental, LLC

  
Signature

4/25/13  
Date

Anthony Bizzu  
Printed or Typed Name

COO  
Title

## ATTACHMENT A

<b>DUE DATE</b>	<b>Disposal Fee Landfill</b>	<b>Disposal Fee Transfer Facility</b>	<b>Late Fee Landfill</b>	<b>Late Fee Transfer Facility</b>	<b>Total Per Month</b>
April 30, 2013	\$258,614.78	\$7,671.30	_____	_____	\$266,286.08
May 15, 2013	\$258,614.78	\$7,671.30	_____	_____	\$266,286.08
June 15, 2013	\$258,614.78	\$7,671.30	_____	_____	\$266,286.08
July 15, 2013	\$258,614.78	\$7,671.30	_____	_____	\$266,286.08
August 15, 2013	\$258,614.78	\$7,671.30	_____	_____	\$266,286.08
September 15, 2013	\$258,614.77	\$7,671.30	_____	_____	\$266,286.07
October 15, 2013	_____	_____	\$81,290.24	\$12,258.57	\$93,548.81
November 15, 2013	_____	_____	\$81,290.24	_____	\$81,290.24
December 15, 2013	_____	_____	\$81,290.24	_____	\$81,290.24
January 15, 2014	_____	_____	\$81,290.24	_____	\$81,290.24
February 15, 2014	_____	_____	\$81,290.24	_____	\$81,290.24
March 15, 2014	_____	_____	\$81,290.24	_____	\$81,290.24

	<b>Disposal Fee Landfill Total</b>	<b>Disposal Fee Transfer Facility Total</b>	<b>Late Fee Landfill Total</b>	<b>Late Fee Transfer Facility Total</b>	<b>Total:</b>
	\$1,551,688.67	\$46,027.80	\$487,741.44	\$12,258.57	\$2,097,716.48