

**BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
FOR THE STATE OF OHIO**

BOARD OF TRUSTEES OF COLERAIN TOWNSHIP 4200 Springdale Road Cincinnati, OH 45251 (513) 385-7500	:	Case No. ERAC _____
	:	
Appellant,	:	
	:	
v.	:	
	:	
CHRIS KORLESKI, Director Environmental Protection Agency P.O. Box 1049 122 South Front Street Columbus, Ohio 43216	:	
	:	
Appellee.	:	

NOTICE OF APPEAL

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ENVIRONMENTAL REVIEW
APPEALS COMMISSION
2010 APR 16 PM 4: 12

Pursuant to O.R.C. § 3745.04 and O.R.C. § 3745.07, the Board of Trustees of Colerain Township (the “Board”) hereby files this appeal with the Environmental Review Appeals Commission (the “Commission” or “ERAC”) from the Final Findings and Orders (“FF&Os”) issued by the Director of the Ohio Environmental Protection Agency (the “Director” or the “Ohio EPA”) to Rumpke Sanitary Landfill, Inc. (“Rumpke”) on March 18, 2010.

The following is a specification of the Boards’ objections, setting forth the manner in which the Board has been aggrieved and adversely affected by the Director’s final action, the preliminary facts essential for review, a summary of the Board’s objections, the Assignments of Error to be resolved by the Commission, and the relief the Board is requesting.

I. STATEMENT OF PRELIMINARY FACTS

1. Rumpke owns and operates a sanitary landfill on 10795 Hughes Road in Colerain Township, Hamilton County, Ohio (the “Landfill” or the “Rumpke Landfill”).

2. Colerain Township is the largest Township in the state of Ohio with a population of roughly 62,000 residents.

3. Approximately 17,000 residents of Colerain Township live within a two mile radius of the Rumpke Landfill.

4. Thousands of the Township's residents have been and continue to be adversely affected and aggrieved by the Rumpke Landfill.

5. Problems such as smoke from fires, odors, and emissions of particulate matter into the atmosphere are among the problems that residents of the Township have experienced. Other emissions from the Landfill that adversely affect local residents include sulfur dioxide, carbon monoxide, non-methane organic compounds, nitrogen oxides, methane, and other volatile organic compounds.

6. The Board of Trustees of Colerain Township is the duly elected political entity that represents the residents of the Township, and is the Appellant in this case.

7. On or about August 13, 2009, the temperature in one of the Landfill's monitoring wellheads exceeded permissible limits. Additional adverse conditions were documented shortly thereafter.

8. On or about September 1, 2009, the Ohio EPA concluded that conditions at the Landfill constituted an underground fire.

9. The Ohio EPA further determined that the Landfill was violating applicable New Source Performance Standards ("NSPS"), its air Permit to Install ("PTI"), its Title V operating permit, and Ohio EPA's solid waste management rules.

10. In response to this emergency, the Director, the U.S. EPA, the Hamilton County Public Health Department, the Hamilton County Department of Environmental Services, and the

Colerain Township Fire Department began working with Rumpke on an action plan to abate the violations including a plan to monitor site conditions.

11. Commencing in September of 2009, the Director entered into negotiations with Rumpke on FF&Os to address the aforementioned violations and the ongoing fire.

12. Representatives of Hamilton County and the Township participated in this process. Representatives of the Township shared their concerns about the Landfill with representatives of the Hamilton County Public Health Department, the Hamilton County Department of Environmental Services, and the Director. They offered comments and suggestions on the actions that the Director should order Rumpke to take to monitor and ultimately abate the fire, and the aforementioned violations, and to prevent these fires and violations from reoccurring. (This was not the first fire that the Rumpke Landfill has experienced.)

13. According to the Director, the fire and the other violations remain ongoing.

14. The aforementioned discussions and negotiations culminated in FF&Os issued to Rumpke by the Director on March 18, 2010.

15. Notice of these FF&Os was published in the *Cincinnati Enquirer* on March 19, 2010.

16. The FF&Os included an Action Plan.

17. Copies of the FF&Os and Action Plan are attached to this Notice of Appeal, and are the subject of this Appeal.

18. The Board does not believe that the Director's FF&Os and Action Plan are adequate (1) to abate the existing fire and other violations at the Landfill, (2) to prevent such

violations from occurring in the future, and (3) to protect the health, safety, welfare, and environment of the residents of Colerain Township.

II. SUMMARY OF THE BOARD'S OBJECTIONS

The Board has six overarching objections to the Director's FF&Os and Action Plan:

1. Although characterized as a "living document," by the Director and Rumpke, the Action Plan does not provide for any input from the Board. Although Colerain Township's Fire Department is critically important to the Action Plan, the Township has been excluded from the Action Plan Team.

2. The Action Plan does not provide for any input from or communication with the citizens of Colerain Township – no meetings, no inspections, and not even any status reports.

3. The Action Plan is long on studies and evaluations, but short on actions.

4. The actions called for in the Action Plan are inadequate to delineate the "fire zone," let alone limit or abate the fire.

5. Most of the monitoring requirements in the Action Plan are inadequate.

6. The Action Plan calls for little or nothing to prevent more fires in the future. The heart of the problem is disposal of waste that can cause exothermic reactions. The Action Plan will not accomplish this.

III. ASSIGNMENTS OF ERROR

The Board is aggrieved and adversely affected by the Director's issuance of the FF&Os. NOW THEREFORE, the Board submits the following Assignments of Error for resolution by the Commission:

1. The Director's FF&Os and Action Plan are unlawful and unreasonable because they foreclose the Board and the very citizens who are most likely to be harmed by the Landfill

from any input into the implementation of the Action Plan or any future modifications to that Plan.

2. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide the Board or any of the citizens that it represents a right (1) to inspect the Landfill, (2) attend meetings to acquire information about implementation of the Action Plan and the current status of the fire, or (3) to even receive status reports.

3. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures to adequately delineate the scope of the current fire.

4. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures to adequately monitor the status of the current fire.

5. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to prevent the fire from spreading.

6. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to prevent future fires.

7. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures to adequately monitor or control odors.

8. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures to adequately monitor or control the generation, collection, or control of leachate.

9. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to ensure slope stability.

10. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to monitor or control the generation, collection, or control of landfill gas (methane).

11. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to manage Landfill gas pressure or condensate.

12. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to monitor or prevent elevated emissions of particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, or volatile organic compounds from the Landfill.

13. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures to adequately monitor or control Landfill temperatures.

14. The Director's FF&Os and Action Plan are unlawful and unreasonable because they will not abate the Landfill's violations of applicable NSPS.

15. The Director's FF&Os and Action Plan are unlawful and unreasonable because they will not abate the Landfill's violations of its air PTI.

16. The Director's FF&Os and Action Plan are unlawful and unreasonable because they will not abate the Landfill's violations of its Clean Air Act Title V operating permit.

17. The Director's FF&Os and Action Plan are unlawful and unreasonable because they will not abate the Landfill's violations of applicable Ohio EPA solid waste management rules.

18. The Director's FF&Os and Action Plan are unlawful and unreasonable because they will not abate the Landfill's violations of Ohio's Air Nuisance rule codified at O.A.C. 3745-15-07.

19. The Director's FF&Os and Action Plan are unlawful and unreasonable because they do not provide for measures adequate to prepare for contingencies to reduce response time to address Landfill fires and other emergencies.

20. The Director's FF&Os and Action Plan are unlawful and unreasonable because they grant Rumpke a variance in violation of the procedural requirements of Chapter 119 of the Ohio Revised Code.

Additional Assignments of Error specific to the Action Plan include but are not limited to:

21. The Director acted unlawfully and unreasonably because the Action Plan does not call for monitoring Landfill leachate for Biological Oxygen Demand ("BOD") or Chemical Oxygen Demand ("COD") as indicia of the characteristics that can cause a fire.

22. The Director acted unlawfully and unreasonably because the Action Plan calls for monitoring of the area where the fire is located that is inadequate. For example, the Action Plan initially calls for monitoring of the sentinel monitoring points only on a monthly basis.

23. The Director acted unlawfully and unreasonably because the Action Plan does not call for any quantitative evaluation of potential "exothermic wastes" that the Landfill accepts, or any restrictions on the acceptance of such wastes.

24. The Director acted unlawfully and unreasonably because the Action Plan does not call for enough sampling points to characterize and compare leachate, condensate, and liquids removed from the gas extraction wells and the leachate collection system in the area of the fire (what the Plan calls the "affected area") from those in the unaffected area to provide statistically valid data.

25. The Director acted unlawfully and unreasonably because the Action Plan currently calls for only two borings in the affected area to define the vertical extent of the fire.

26. The Director acted unlawfully and unreasonably because the Action Plan currently calls for only two monitoring probes in the affected area to define the vertical extent of the fire.

27. The Director acted unlawfully and unreasonably because the Action Plan calls for only two wells and thermocouples to monitor the temperature of the leachate sumps and laterals, and monitoring of the temperature in those sumps and laterals only on a monthly basis.

28. The Director acted unlawfully and unreasonably because the Action Plan calls for sampling of gas emissions from only one well in the affected area and only two wells in the unaffected area to “fingerprint” and differentiate affected areas from unaffected areas – and only a single sampling event to make this differentiation.

29. The Director acted unlawfully and unreasonably because the contingency plan to determine when an isolation break must be installed and/or implemented called for in the Action Plan is based upon proposed criteria and data that are too limited to make informed judgments.

30. The Board reserves the right to assert additional assignments of error as this appeal proceeds.

IV. REQUEST FOR RELIEF

WHEREFORE, the Board respectfully requests that the Commission issue an order (1) declaring the aforementioned Director’s FF&Os and Action Plan to be unlawful and unreasonable; (2) remanding the Director’s FF&Os and Action Plan to the Director with

instructions to modify the FF&Os and Action Plan to correct the errors described above; and (3) providing such other and further relief as the Commission may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal has been served by regular U.S. Mail, postage prepaid, to Chris Korleski, Director, Ohio Environmental Protection Agency, P.O. Box 1049, 122 S. Front Street, Columbus, Ohio 43216-1049, and Dale Vitale, Esq., Ohio Attorney General's Office, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215 this 16th day of April 2010.

Elizabeth M. Norton