

OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

Date Issued: MAY 02 2003

Date Effective: MAY 02 2003

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Marshall University :
400 Hal Greer Boulevard :
Huntington, WV 25755 :

**Director's Final
Findings and Consent Order**

Respondent

PREAMBLE

It is hereby agreed by and between the parties hereto as follows:

I. JURISDICTION

This Director's Final Findings and Consent Order ("Consent Order") is hereby issued to Marshall University ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3714.12, 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

This Consent Order shall apply to and be binding upon the Respondent, and its successors in interest liable under Ohio law. No changes in ownership relating to the Property, as hereafter defined, will in any way alter the responsibilities of the Respondent under this Consent Order. The obligations of the Respondent under this Consent Order may be

altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in this Consent Order shall have the same meaning as used in ORC Chapters 3714. and 3734. and Ohio Administrative Code ("OAC") Chapters 3745-27 and 3745-400.

IV. FINDINGS OF FACT

The Director has determined the following findings of fact:

1. McSweeney's Mill & Mine Service, a general partnership with Larry McSweeney as a general partner, is the owner of the 2.61 parcel of land ("Property") located off Buffalo Creek Road, Lawrence County, Ohio, near the Village of Chesapeake. This Property is recorded as Parcel Number 06-053-0500.002 in the Lawrence County Record of Deeds and is directly adjacent to Buffalo Creek.
2. The Property is neither licensed nor permitted as a solid waste disposal facility in accordance with ORC Chapter 3734. and OAC Chapter 3745-27, nor is the Property licensed as a construction and demolition debris ("C&DD") facility in accordance with ORC Chapter 3714. and OAC Chapter 3745-400.
3. On September 5, 2001, Ohio EPA received a complaint that Marshall University, located in Huntington, West Virginia, was going to conduct a large demolition project and that Rick Adkins of Adkins Enterprises, Inc. was going to haul the C&DD to the Property for disposal.
4. Mr. Adkins did haul C&DD from Marshall University to the Property.
5. On October 8, 2001, Ohio EPA received a call from a consultant representing Marshall University in the demolition of the Marshall University Hospital. Ohio EPA informed the consultant of the illegal disposal occurring on the Property. The consultant informed Ohio EPA that Salrecon LLC was the general contractor working on the demolition of the Marshall University Hospital and that Salrecon LLC had subcontracted for the disposal of the C&DD from the hospital demolition with Adkins Enterprises, Inc.
6. On October 10, 2001, Ohio EPA met with Mr. McSweeney, Mr. Adkins and Mr. Michael Meadows of Marshall University at the Property to discuss the illegal disposal of solid waste and C&DD at the Property. During the meeting, Mr. Adkins

indicated that it was his position that C&DD could be disposed of at the Property so long as it amounted to less than 15% of any clean hard fill placed at the Property. No such exemption exists under Ohio law.

7. Ohio EPA conducted a follow-up inspection of the Property on October 17, 2001. During this inspection, Ohio EPA observed that additional C&DD had been disposed of at the Property and that solid wastes, including red infectious waste bags, had also been disposed of at the Property.
8. On October 18, 2001, Marshall University directed Salrecon LLC and its subcontractors not to dispose of any additional waste at the Property.
9. On October 29, 2001, Ohio EPA sent an Notice of Violation regarding the illegal disposal of solid wastes and C&DD at the Property to Marshall University and Salrecon, LLC.
10. Respondent is a "person" as defined under ORC Section 3734.01(G) and ORC Section 3714.01(G).
11. Respondent disposed or permitted or allowed for the disposal of "solid wastes" and "construction and demolition debris" as those terms are defined in OAC Rules 3745-27-01(B)(43) and 3745-400-01(F), respectively, at the Property.
12. Respondent has created an unpermitted, unlicensed "solid waste disposal facility" and "open dump," as those terms are defined in OAC Rules 3745-27-01(C)(11) and (B)(23), respectively, in violation of ORC Sections 3734.03 and 3734.05(A) and OAC Rule 3745-27-05(C). Respondent has also created an unlicensed "construction and demolition debris facility" as that term is defined in OAC Rule 3745-400-01(G) in violation of ORC Section 3714.06(A) and OAC Rule 3745-400-04(D).
13. The Director has determined these Findings of Fact and nothing in these Findings shall be considered to be an admission by Marshall University of any matter of law or fact, including but not limited to, any guilt or wrong doing. Nor does Marshall admit to the jurisdiction of the Ohio EPA with respect to it, except that Marshall University agrees to comply with and be bound by these Orders.

V. CONSENT ORDER

In order to avoid cost of further proceeding Respondent has agreed to the following:

1. In lieu of claims for civil penalties which may be assessed pursuant to ORC Chapters 3734. and 3714., Respondent shall pay \$15,000.00 to the Lawrence-Scioto Solid Waste Management District for deposit in the "B95 Special Environmental Fund" for open dump cleanups in accordance with the following schedule:
 - A. Within ninety (90) days after the effective date of this Consent Order, Respondent shall pay \$10,000.00; and
 - B. Within one hundred and eighty (180) days, Respondent shall pay \$5,000.00.

Payment shall be made by tendering certified checks to the Lawrence-Scioto Solid Waste Management District with copies of the checks to be sent to Mr. Jeffrey Hurdley, Legal, Ohio EPA.

VI. TERMINATION AND SATISFACTION

The obligations of the Respondent under this Consent Order shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be submitted by the Respondent and shall be signed by a responsible official of the Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

VII. OTHER CLAIMS

Nothing in this Consent Order 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 signatory to this Consent Order, for any liability arising out of or relating to the operation of the Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and

regulations. Nothing in this Consent Order shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Property. Ohio EPA reserves all rights and privileges, except as specified herein.

IX. 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 Consent Order or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including penalties against the Respondent for noncompliance with this Consent Order.

Nothing in this Consent Order shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in this Consent Order. Further nothing herein shall be deemed to be a waiver of any defenses Respondent may have in the future including, but not limited to immunity and jurisdiction, for violations which may be alleged in the future but which are not addressed in this Consent Order.

X. 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 those violations addressed in this Consent Order, the Respondent agrees that this Consent Order is lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondent agrees to comply with this Consent Order.

The Respondent hereby waives the right to appeal the issuance, terms and service of this Consent Order, and the Respondent hereby waives any and all rights it may have to seek administrative or judicial review of this Consent Order either in law or equity.

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

XI. SIGNATORIES

Each undersigned representative of a signatory to this Consent Order certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to

legally bind such signatory to this document.

IT IS SO AGREED:

Marshall University

By: Edward G. Moore

Title: Vice President

Date: 4/15/03

Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones, Director