

Date Issued: JUL 22 2003

Date Effective: JUL 22 2003

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Larry McSweeney :
P.O. Box 7995 :
Huntington W.VA. 25779 :

McSweeney's Mill & :
Mine Service :
Rt. 1 Solida Road :
South Point, OH 45680 :

Adkins Enterprises, Inc., :
dba Adkins Trucking :
902 Solida Road :
South Point, OH 45680 :

Respondents

**Director's Final
Findings and Orders**

OHIO E.P.A.
JUL 22 2003
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

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

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to McSweeney's Mill & Mine Service, Larry McSweeney and Adkins Enterprises, Inc. (collectively the "Respondents") 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

These Orders shall apply to and be binding upon the Respondents, and their 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 Respondents under these Orders. The obligations of the Respondents under these Orders may be altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders 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 is 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. Ohio EPA contacted Adkins Enterprises, Inc. on September 5, 2001 to discuss this complaint.
4. On September 6, 2001, Mr. Adkins called Ohio EPA to discuss the definition of "clean hard fill," which is defined in OAC Rule 3745-400-01(E) to mean "reinforced or nonreinforced concrete, asphalt concrete, brick, block, tile and/or stone which cannot be reutilized as construction material." Mr. Adkins was informed of the need to submit a Notice of Intent to Fill prior to the disposal of any clean hard fill at the Property pursuant to OAC Rule 3745-400-05(C), that the Property is not a licensed

C&DD facility and that it would be illegal to dispose of C&DD at the Property. Mr. Adkins indicated that C&DD material would be disposed of at a licensed C&DD facility.

5. Ohio EPA received a complaint on September 17, 2001, that illegal disposal of C&DD was occurring at the Property. Ohio EPA inspected the Property on September 18, 2001, and met with Larry McSweeney, the general partner of McSweeney's Mill & Mine Service. Ohio EPA observed the presence of C&DD, including wood waste and metal, in material which had been disposed of at the Property. Ohio EPA informed Mr. McSweeney that it was against the law to dispose of C&DD at the Property and that such material must be removed and properly disposed of in accordance with Ohio law. A Notice of Violation ("NOV") memorializing the results of the inspection was sent to Mr. McSweeney on September 24, 2001.
6. Ohio EPA received another complaint that C&DD was being disposed of at the Property and inspected the Property on September 26, 2001. Ohio EPA observed that additional C&DD and solid waste in the form of a black granular industrial waste had been disposed of on the Property. An NOV memorializing the results of the inspection was sent to Mr. McSweeney on September 27, 2001.
7. In response to an additional complaint of illegal disposal of wastes, Ohio EPA inspected the Property on October 2, 2001, and observed that more C&DD had been disposed of on the Property. During this inspection, Ohio EPA met with Mr. Rick Adkins who was onsite. Mr. Adkins informed Ohio EPA that the black granular industrial waste came from a manufacturing plant in Huntington, West Virginia. Mr. Adkins estimated the quantity of the black granular industrial waste to be approximately 30 tons. The black granular industrial waste material was a solid waste as defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(B)(43). Mr. Adkins further indicated that the C&DD that had been disposed of on the Property came from the demolition of Marshall University Hospital. An NOV memorializing the results of this inspection was sent to Mr. McSweeney on October 4, 2001, and to Mr. Adkins on October 18, 2001.
8. 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 and was informed that Salrecon LLC was the general contractor working on the demolition of the Marshall University Hospital and that Salrecon LLC had subcontracted the disposal of the C&DD from the hospital demolition to Adkins Enterprises, Inc.
9. 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. An NOV memorializing this meeting was sent to Mr. McSweeney on October 11, 2001.

10. 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. An NOV memorializing this inspection was sent to Mr. McSweeney on October 18, 2001.
11. On October 18, 2001, Marshall University directed Salrecon LLC and its subcontractors not to dispose of any additional waste at the Property.
12. On October 22, 2001, Ohio EPA received a letter from Mr. Larry McSweeney acknowledging that C&DD had been disposed of at the Property and discussing efforts he was undertaking to remedy the situation. Mr. McSweeney attached a waste disposal receipt, which had been signed by Rick Adkins, indicating that approximately 42.5 tons of the black granular industrial solid waste and approximately 15 tons of C&DD had been disposed of at Newsome's Landfill, Inc., a solid waste disposal facility, on October 12, 2001.
13. Ohio EPA sent an NOV regarding the illegal disposal of solid wastes and C&DD at the Property to Marshall University and Salrecon, LLC on October 29, 2001. Additional NOVs were sent to Mr. McSweeney on November 13, 2001 and November 15, 2001, and to Mr. Adkins on December 3, 2001.
14. Respondents are "persons" as defined under ORC Section 3734.01(G) and ORC Section 3714.01(G).
15. Respondents 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.
16. The Respondents have 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). The Respondents have 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).

17. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact.
18. Ohio EPA is separately pursuing Marshall University and Salrecon LLC for the violations of law which are the subject of these Orders.

V. ORDERS

The Respondents shall achieve compliance with ORC Chapters 3734. and 3714. and the regulations promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these orders, the Respondents shall immediately cease acceptance and disposal of all solid wastes at the Property and comply with ORC Chapter 3734. and OAC Chapter 3745-27.
2. Upon the effective date of these orders, the Respondents shall immediately cease acceptance and disposal of all C&DD at the Property and comply with the provisions of ORC Chapter 3714. and OAC Chapter 3745-400.
3. Within 180 days after the effective date of these Orders, the Respondents shall remove all solid waste from the Property and dispose of all solid waste at a licensed solid waste disposal facility. The Respondents shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of solid wastes disposed.
4. Within 180 days after the effective date of these Orders, the Respondents shall remove all C&DD from the Property and dispose of all C&DD at a licensed C&DD facility or at a licensed solid waste disposal facility. Respondents shall obtain disposal receipts from the licensed solid waste disposal facility and/or the licensed C&DD facility indicating weight or volume of C&DD disposed.
5. If any solid waste and C&DD at the Property cannot be segregated, then all such unsegregated solid waste and C&DD must be disposed of at a licensed solid waste disposal facility within 180 days after the effective date of these Orders. Respondents shall obtain disposal receipts from the licensed solid waste disposal facility indicating the weight or volume of the unsegregated solid waste and C&DD.
6. Respondents shall perform the work required by Orders No. 3, 4 and 5 in accordance with the Work Plan attached hereto and incorporated herein as Appendix A.

7. Within 7 days after completion of Orders No. 3, 4 and 5, the Respondents shall submit to Ohio EPA a written notice of completion, along with documentation of proper removal, transportation and disposal, including disposal receipts from the licensed disposal facilities.
8. In lieu of claims for civil penalties which may be assessed pursuant to ORC Chapters 3734. and 3714., Respondents shall pay \$28,000.00 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 these Orders, Respondents Larry McSweeney and Adkins Enterprises, Inc. shall each pay \$7,000.00 for a total of \$14,000.00; and
 - B. Within one hundred and eighty (180) days, Respondents Larry McSweeney and Adkins Enterprises, Inc. shall each pay an additional \$7,000.00 for a total of \$14,000.00.

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 Respondents under these Orders shall terminate when the Respondents certify in writing and demonstrate 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 Respondents and shall be signed by responsible officials of the Respondents. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of the Respondents.

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 signatory to these Orders, 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 these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders 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. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
SEDO District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, OH 43138

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

X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including penalties against the Respondents for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondents to perform additional activities pursuant to ORC

Chapters 3734., 3714. or 6111., and regulations promulgated thereunder, or any other applicable law in the future. Nothing herein shall restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

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 those violations addressed in these Orders, the Respondents agree that these Orders are lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondents agree to comply with these Orders.

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

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

XII. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

**Larry McSweeney &
McSweeney's Mill & Mine Service**

By: 

Title: CEO

Date: 7-10-03

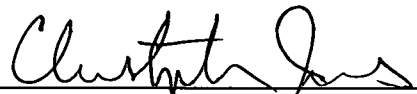
Adkins Enterprises, Inc.

By: 

Title: owner

Date: 7-10-03

Ohio Environmental Protection Agency


Christopher Jones, Director

REMEDIATION WORK PLAN FOR McSWEENEY CLEAN HARD FILL SITE

Introduction

Materials from the demolition of a Marshall University hospital building were placed on the 2.61-acre property owned by McSweeney's Mill & Mine Service of which Mr. Larry McSweeney is a general partner. The property is located off Buffalo Creek Road, Lawrence County, Ohio, near the village of Chesapeake; and was intended to be filled with soil and "clean hard fill," as it is defined in Ohio Administrative Code 3745-400-01, to bring it up to a consistent grade.

The following work plan consists of specific tasks that will be performed at the site to sort through demolition materials from the Marshall University hospital building in an effort to remove construction & demolition debris (C&DD) and any solid waste from the clean hard fill and soil fill.

The work plan is divided into tasks including delineation of Marshall University demolition materials, verification of waste limits, segregation of C&DD and solid waste from the clean hard fill, disposal of the segregated C&DD and/or solid waste, replacement of the clean hard fill, and documentation of remedial activities. In addition, provisions have been added for a professional engineer to oversee the remedial and disposal activities.

Task 1: Delineation of Marshall University Demolition Materials

The site shall be staked to delineate the area where the materials from the demolition of the Marshall University hospital building were placed in accordance with the attached Figure 1. Stakes or cones shall be placed approximately every 50 feet to delineate the remediation zone.

Task 2: Verification of Waste Limits

Confirmation trenching shall be used in areas adjacent to the remediation zone to verify that only clean hard fill exists in the remainder of the fill. As depicted in the attached Figure 1, the trenches shall be parallel to each other at 30 foot intervals and shall be oriented in a north to south direction. Trenching activity shall begin with the western most trench and shall proceed eastward with successive trenches across the property as depicted in attached Figure 1. The trenches shall extend vertically at least ten feet deeper than the site surface elevation of the trenching location. If any waste materials are encountered during trenching activities, the trench must be excavated an additional 5 feet down. If any concrete pillars are encountered during trenching, that because of their size and weight cannot be removed with a backhoe or front end loader, then pits shall be dug at ten foot depths around the unremoved concrete pillars. The

location and number of these pits shall be approved by Ohio EPA. Trench and pit excavation shall continue down in 5 foot intervals until no more waste is encountered or until natural ground is encountered. If any waste material is encountered in the trenches or pits during any trenching or pit activity, all material between the trenching or pit activity and the remediation zone shall be removed to a depth of that confirmation trench or pit. Respondents shall provide Ohio EPA with written notice at least three (3) business days prior to any excavation activities to allow time for inspection.

Task 3: Segregation of Debris

Fill materials shall be excavated from within the limits of waste with equipment such as a tracked hydraulic excavator and placed in a staging area. C&DD and solid waste shall be removed from the clean hard fill by backhoe (perhaps with picker attachment), front-end loader, or by hand and stockpiled until a practical quantity is collected for hauling purposes (also see Task 4).

Qualified field personnel experienced in solid and hazardous waste regulation shall be present at all times during sorting to assist in determining the segregation of materials and shall provide daily logs of remedial activities.

Excavation and sorting of the material shall continue in this manner until all material within the waste limits has been sorted through. The sequence of excavation shall be considerate of replacing the clean hard fill and soil fill at the site.

If and when segregating the types of materials becomes cost prohibitive and/or deemed too cumbersome, any of the excavated materials from within the waste limits can be disposed of at a licensed municipal solid waste facility.

Task 4: Removal of Debris & Waste

As excavation and sorting progresses, segregated C&DD and solid waste shall be hauled off the site to approved C&DD or municipal solid waste facilities, as appropriate. If any C&DD or solid waste cannot be segregated, then all unsegregated solid waste and C&DD will be disposed of in a licensed solid waste disposal facility. Disposal receipts indicating weight or volume of disposed materials shall be obtained and included in the documentation of remedial activities.

Task 5: Replacement of Clean Hard Fill

As excavation and sorting progresses, segregated clean hard fill and soil will be stockpiled for refilling. Respondents shall notify Ohio EPA in writing at least three (3) business days prior to refilling of clean hard fill or confirmation trenches/pits to allow time for inspection. A bulldozer and/or front-end loader shall be used to push or place clean hard fill and soil back into the available fill areas. Replaced clean hard fill and soil shall be tracked in place with a bulldozer to create as flat a surface as possible and the elevation of the replaced materials shall not exceed the elevation of the adjacent fill.

Certification

A Professional Engineer registered in the state of Ohio and experienced in solid and hazardous waste regulation shall oversee the activities at the site, and certify upon completion, that all encountered wastes were segregated from the clean hard fill and disposed of at appropriate facilities. This certification report shall include daily logs of remedial activities (i.e. excavation, staging, sorting, refilling, etc.), photographs with narrative descriptions, daily logs of removal activities (i.e. haulers, load counts, waste materials transported, waste material destinations), a list of transporters with contact information, and copies of disposal receipts.

Definitions:

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

Fig. 1

