

OHIO E.P.A.  
JUN 12 2002  
ENTERED DIRECTOR'S JOURNAL

Date Issued: JUN 12 2002  
Date Effective: JUN 12 2002

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

WCI Steel, Inc. : Director's Final Findings  
1040 Pine Avenue, SE : and Orders  
Warren, Ohio 44483 :

Respondent

**PREAMBLE**

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

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are hereby issued to WCI Steel, Inc. (Respondent or WCI Steel) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under sections 3734.02(G), 3734.13 and 3745.01 of the Ohio Revised Code (ORC).

**II. PARTIES**

These Orders shall apply to and be binding upon the Respondent, and its assigns and successors in interest. No change in ownership relating to WCI Steel's operating Class I Residual Waste Landfill will in any way alter the Respondent's obligations under these Orders. The Respondent's obligations 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 Chapter 3734. and the regulations promulgated thereunder.

### IV. FINDINGS OF FACT

The Director has determined the following findings of fact:

1. WCI Steel, Inc., F.K.A. Warren Consolidated Industries, is the owner, operator, permittee and licensee of the operating WCI Steel Class I Residual Waste Landfill (Facility) which is located at WCI Steel's iron and steelmaking facility at 1040 Pine Avenue, SE, Warren, Trumbull County.
2. The Facility is a "residual waste landfill facility" as that term is defined in the Ohio Administrative Code (OAC) Rule 3745-30-01.
3. The Facility has been in existence since prior to enactment of Ohio's solid waste regulations in 1968. WCI Steel's predecessor, Republic Steel, filed with Ohio EPA an operational report, pursuant to OAC 3745-27-09(J) (effective July 29, 1976), on July 5, 1978 (1978 Operational Report).
4. Revisions to the solid waste laws enacted with passage of Am. Sub. H.B. 592 (117<sup>th</sup> General Assembly) required that all sites that commenced operation on or before July 1, 1968, submit applications for permits to install to Ohio EPA for approval under applicable rules established by Ohio EPA. Pursuant to ORC Section 3734.05(A)(3), WCI Steel submitted an application for a permit to install prior to December 31, 1990.
5. Ohio EPA issued an initial solid waste facility license, number 78-00-04, to Respondent on March 12, 1991, effective calendar year 1991. The 1991 solid waste facility license contained a condition which stated, "Warren Consolidated Industries shall attain compliance with Ohio Administrative Code 3745-27-09(A) by taking the appropriate steps to ensure that all vertical elevations at the landfill do not exceed those elevations delineated in the operating report submitted on July 5, 1978."

Respondent's 1991 solid waste facility license further required the above activities to be completed by July 31, 1991, or the 1991 solid waste facility license would expire on August 1, 1991. On September 13, 1991, Respondent submitted a request to extend the July 31, 1991, deadline contained within Respondent's 1991 solid waste facility license. Ohio EPA extended the deadline to November 30, 1991, in correspondence dated November 8, 1991.

6. Respondents have been issued a solid waste facility license on an annual basis since receiving its initial 1991 solid waste facility license. However, WCI Steel's applications for licenses for calendar year 2001 and calendar year 2002 are currently pending before the Trumbull County Board of Health.
7. On December 7, 1992, the Director proposed to deny WCI Steel's application for a permit to install citing as a ground for denial the Facility's inability to meet the siting requirements of OAC Rule 3745-30-06, including the prohibition against location of a residual waste facility's location within 300 feet of the property line and within 200 feet of the Mahoning River. See OAC Rule 3745-30-06(B)(12) and (14). WCI Steel filed a request for adjudication ("Request for Adjudication") with respect to the Proposed Denial on December 31, 1992.
8. On June 13, 1994, Respondent submitted a request to re-designate the Facility as a residual waste landfill facility subject to the provisions of OAC Chapter 3745-30 in lieu of OAC Rules 3745-27-01 to OAC Rule 3745-27-19.
9. On February 16, 1995, the Director authorized the Facility's June 13, 1994 re-designation request (1995 Re-designation Authorization). The February 1995 Re-designation Authorization allowed the Facility to be licensed and operated as a Class I residual waste landfill facility, subject to the following conditions:

Condition 1: "WCI Steel, Inc. Industrial Solid Waste Landfill shall be operated in compliance with the Operational Report filed with Ohio EPA on July 5, 1978, with the 1994 operating license, with any director's orders, board of health orders or other legally binding documents pertaining to WCI Steel, Inc. Landfill, until such time as WCI Steel, Inc. obtains the necessary approval(s) to change these requirements, e.g. permit to install approval, termination of orders, new license application, etc."

Condition 2: "WCI Steel, Inc. Landfill shall be operated as a Class I residual waste landfill as specified in OAC Rules 3745-30-01(C), 3745-30-02(D), and 3745-30-04, and will be regulated as a Class I residual waste landfill until a change in classification is authorized by the Director."

Condition 3: "WCI Steel, Inc. must obtain prior approval from Ohio EPA, Northeast District Office, for any substantial change or addition to the waste streams being disposed of in WCI Steel, Inc. Landfill as of the date of this authorization."

Condition 4: Except as provided in Condition Number 1, above, Respondent shall operate the Facility in compliance with OAC Chapter 3745-30.

10. On February 12, 1999, the parties filed a Joint Stipulation and Settlement Agreement with the Hearing Examiner assigned to the Request for Adjudication representing that the parties had come to an agreement with respect to the terms of a PTI acceptable to the parties. Contingent upon the issuance of the PTI as agreed upon, WCI Steel would withdraw its Request for Adjudication. On February 23, 1999, the Hearing Examiner issued his Report and Recommendation adopting the substance of the Joint Stipulation and Settlement Agreement. On May 18, 1999, the Director issued Findings and Orders dismissing the Request for Adjudication and ordering issuance of the PTI.
11. On July 23, 1999, the Facility's PTI was issued (1999 PTI). The 1999 PTI approved construction of a proposed 38 acre residual waste landfill to include both the area currently occupied by WCI's existing residual waste landfill ("Existing Landfill") and an area to the south of the existing landfill. Under the 1999 PTI, WCI is authorized to remove waste from the Existing Landfill and place it in the newly constructed landfill so that construction can occur at the Existing Landfill.
12. WCI is not authorized to exceed the limits of waste placement as set forth in the July 5, 1978 Operational Report during construction of the proposed new landfill.
13. Following Ohio EPA's review of the Facility's 1997 and 1998 annual reports, Ohio EPA requested clarification of an apparent overfill in waste elevations. On October 22, 1999, Respondent provided two isopach maps comparing the 1998 and 1999 waste elevations to those elevations authorized in the Facility's July 5, 1978 Operational Report. Based upon the information, Ohio EPA confirmed the Facility exceeded its authorized vertical limits of waste placement and on December 6, 1999, issued a Notice of Violation (NOV) to the Respondent, citing the over-height conditions as a violation of OAC Rule 3745-30-14(A).
14. OAC Rule 3745-30-14(A) states in pertinent part, "All operations at residual waste landfill facilities . . . shall be conducted in strict compliance with this rule, the approved detail plans, specifications, information, and terms and conditions of the permit to install issued in accordance with Chapter 3745-30 of the Administrative Code, and the residual waste landfill license issued in accordance with Chapter 3745-37 of the Administrative Code."

15. The Trumbull County Health Department conducted a Facility inspection on June 16, 2000 and noted violations of OAC Rules 3745-30-14(A), 3745-27-04(A) and 3745-30-14(V)(3)(a), and further noted violations of Conditions 1 and 4 of the 1995 Re-designation Authorization, as noted in Finding number 6 above. The Trumbull County Health Department notified WCI Steel of the violations in a NOV letter dated June 19, 2000.
16. OAC Rule 3745-27-04(A) states, "The owner or operator of a sanitary landfill facility which may be deemed a residual waste landfill facility in accordance with paragraph (C) of rule 3745-30-01 of the Administrative Code may obtain authorization from the director in accordance with paragraph (C) of rule 3745-30-02 of the Administrative Code to comply with Chapter 3745-30 of the Administrative Code in lieu of Chapter 3745-27 of the Administrative Code. Upon receiving authorization from the director in accordance with paragraph (C) of rule 3745-30-02 of the Administrative Code, the owner or operator shall comply with the requirements of Chapter 3745-30 of the Administrative Code, except that the owner or operator shall continue to comply with all applicable authorizing document(s), including a plan approval, operational report, or approved permit to install for the sanitary landfill facility, and the current operating license for the sanitary landfill facility until such time as the owner or operator obtains the necessary approvals to change these requirements.
17. OAC Rule 3745-30-14(V)(3)(a) states, "The cap system, as outlined in paragraph (G)(3) of rule 3745-30-09 of the Administrative Code, shall be constructed when a phase has reached the approved final elevations of residual waste placement." Respondent was cited as in violation of this regulation based upon information which indicated that waste had been placed outside of the limits of waste placement at the Existing Facility and based upon the likelihood that Respondent had exceeded the capacity for waste disposal at the Existing Landfill. Subsequent investigation revealed, however, that although Respondent placed waste outside of the limits of waste placement at the Existing Landfill, Respondent had not exceeded the capacity for waste disposal at the Existing Landfill.
18. OAC Rule 3745-31-01(VV)(2) defines "modification" of a solid waste disposal facility as, "A substantial horizontal or vertical increase in the limits of waste placement as

that term is defined in rule 3745-27-01 of the Administrative Code . . . ."

19. ORC Sections 3734.02(C) and 3734.05(A)(2)(a) and OAC Rules 3745-30-05(A) and 3745-31-02(A) require the owner and operator of a solid waste disposal facility to obtain a permit to install prior to modifying a solid waste disposal facility.
20. Respondent has not obtained a PTI to modify the limits of waste placement set forth in the July 5, 1978 Operational Report before completion of construction of the proposed landfill authorized under the 1999 PTI.
21. On February 7, 2000, Respondent submitted a response to Ohio EPA's December 6, 1999 NOV and an alteration request to the 1999 PTI. In this letter, Respondent acknowledged that the "approved application [for the 1999 PTI] does not, however, describe the specifics of the recycling operations (such as where the operations will occur or what the sequence of the operations will be) prior to construction of Phase I of the new residual waste landfill."
22. WCI Steel has denied that its Facility has been operated in violation of ORC Sections 3734.02(C) and 3734.05(A)(2)(a), OAC Rules 3745-27-04(A), 3745-30-05(A), 3745-30-14(A), 3745-30-14(V)(3)(a), 3745-31-02(A), and/or Conditions Nos. 1 and/or 4 of the 1995 Re-designation Authorization. WCI Steel, however, does agree without admission of fact, liability or violation to comply with these Orders.
23. On December 12, 2001, Respondent submitted to Ohio EPA a slope stability analysis for the Facility. Ohio EPA sent a Notice of Deficiency to Respondent on January 23, 2002. Respondent submitted a revised slope stability analysis to Ohio EPA on January 29, 2002, March 18, 2002, and on May 3, 2002. The slope stability analysis performed by Respondent indicates that waste placed outside of the limits of waste placement set forth in the 1978 Operational Report for the southern slope of the Existing Landfill did not achieve the factors of safety yielded by the analysis of the southern slope established by the 1978 Operational Report.

## V. ORDERS

The Respondent shall achieve compliance with ORC Chapter 3734. and the regulations promulgated thereunder according to the following compliance schedule and conditions:

1. Before August 1, 2002, Respondent shall provide to Ohio EPA a topographic map that delineates the areal extent of waste at the Existing Landfill as of June 30, 2002, that exceeds the vertical and horizontal limits of waste placement set forth in the 1978 Operational Report. Pursuant to ORC Section 3734.02(G), Respondent's compliance with the deadline of April 1, 2002, for the filing of the

2001 annual report required by OAC Rule 3745-30-14(HH), including the requirement to submit a topographic map with updated contour lines of the Facility, which includes the Existing Landfill, shall be extended to August 2, 2002. In all other respects, Respondent shall comply with OAC Rule 3745-30-14(H)(H). The extension of the deadline of April 1, 2002, for the filing of the 2001 annual report as required by OAC Rule 3745-30-14(H)(H) shall be for the annual report for calendar year 2001 only. After the effective date of these Orders and consistent with Order No. 6 of these Orders, Respondent shall not have more than 430,000 cubic yards of waste exceeding the vertical and horizontal limits of waste placement set forth in the 1978 Operational Report at the Existing Landfill.

2. Beginning in the year 2003, Respondent shall demonstrate that the maximum amount of waste exceeding the vertical and horizontal limits of waste placement set forth in the 1978 Operational Report at the Existing Landfill is reduced in accordance with the following schedule:

Year	Maximum Exceedance Remaining (In Cubic Yards) At the End of Operating Year
2003	410,400
2004	390,800
2005	371,200
2006	351,600
2007	332,000
2008	312,400
2009	292,800
2010	273,200
2011	253,600
2012	234,000
2013	214,400
2014	194,800
2015	175,200

2016	155,600
2017	136,000
2018	116,400
2019	96,800
2020	77,200
2021	57,600
2022	38,000
2023	18,400
2024	0

Such waste shall be excavated and recycled and any non-recyclable component shall be placed in areas which are lined and permitted for disposal under the 1999 PTI and/or such waste shall be taken to a licensed solid waste disposal facility.

3. The demonstration required by Order No. 2 shall be made to Ohio EPA and the Trumbull County Health Department by April 1, 2004, by calculating the amount of waste exceeding the vertical and horizontal limits of waste placement of the 1978 Operation Report from the aerial survey taken in February or March of 2004 in connection with preparation of the Facility's 2003 Annual Report required by OAC Rule 3745-30-14(HH) and comparing it to the maximum exceedance allowable remaining (in cubic yards) for 2003 set forth in Order No. 2. A minimum of two control points will be set by a traditional field survey on top of the Existing Landfill. The field survey information from these control points will be used to verify the accuracy of the aerial survey. The demonstration required by Order No. 2 shall be made to Ohio EPA and the Trumbull County Health Department in the same manner for each succeeding year by April 1 of each succeeding year.
4. Before January 1, 2025, Respondent shall have removed all waste that exceeds the vertical and horizontal limits of waste placement set forth in the 1978 Operational Report and have recycled such waste and placed any non-recyclable component in areas which are lined and permitted for disposal under the 1999 PTI and/or taken such waste to a licensed solid waste disposal facility. Respondent shall remove waste under the schedule set forth in Order No. 2 unless the Facility is permanently abandoned by WCI Steel under the 1999 PTI.



5. Upon permanently abandoning the Facility, Respondent shall provide written notice to Ohio EPA of the permanent abandonment of the Facility. Within 60 days of sending such notice, Respondent shall submit a closure/post-closure plan to Ohio EPA for approval as required by the 1999 PTI. Respondent shall complete closure and post closure care of the Facility pursuant to applicable law, including OAC Rules 3745-30-09 and 3745-30-10. Respondent shall ensure that upon closure of the Facility, all waste shall either be in areas which are lined and permitted for disposal under the 1999 PTI, or within the vertical and horizontal limits of waste placement set forth in the 1978 Operational Report except as limited by Order No. 6 of these Orders.
6. After the effective date of these Orders, Respondent shall not place waste in areas which are within the limits of waste placement in the 1978 Operational Report, but which are outside of the horizontal limits of waste placement under the 1999 PTI.
7. Respondent shall monitor the stability of the slopes at the Facility every weekday and immediately inform Ohio EPA, Northeast District Office, and the Trumbull County Health Department of any threat to human health or safety or the environment. Respondent shall not place waste at the Facility in such a manner as to threaten human health or safety or the environment. Respondent shall record the results of the weekday monitoring of the slopes at the Facility in a daily log book, which shall be made available to Ohio EPA upon request.
8. Within thirty (30) days after the effective date of these Orders, Respondent shall provide to Ohio EPA for review and comment a Slope Stability Contingency Plan which shall describe the measures Respondent will implement in order to protect human health and safety and the environment in the event that Respondent learns, through monitoring of the slopes or other means, that the slopes at the Facility may slough, slide or otherwise fail.
9. Within thirty-six (36) months after the effective date of these Orders, Respondent shall achieve for the southern slope at the Existing Landfill the factors of safety yielded by the southern slope established under the 1978 Operational Report, unless the Facility is permanently abandoned. If the Facility is permanently abandoned, Respondent shall comply with the provisions of Order No. 5 of these Orders.
10. Within seven (7) days after the effective date of these Orders, Respondent shall erect barricades to inhibit access to the eastern slope of the Existing Landfill and shall maintain such barricades until Respondent achieves for the eastern slope of the Existing Landfill the factors of safety established for slopes under the 1978

### Operational Report.

11. Once the factors of safety yielded by slopes established under the 1978 Operational Report are achieved at the Existing Landfill, Respondent shall maintain such slope stability factors until the final grades set forth in the 1978 Operational Report are reached at the Existing Landfill or the Existing Landfill is replaced with phases constructed pursuant to the 1999 PTI. Respondent shall comply with the final grades and safety factors set forth in the 1999 PTI for all phases constructed pursuant to the 1999 PTI.
12. Respondent shall comply with the terms and conditions of the 1999 PTI and these Orders.
13. Within thirty (30) days after the effective date of these Orders, the Respondent shall pay Ohio EPA the amount of \$ 15,000.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the hazardous waste cleanup fund created under ORC Section 3734.28. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Attention: Vicki Galilei, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, made payable to "Treasurer, State of Ohio," and by submitting a copy of the check to Mr. Jeff Hurdley, Legal, Ohio EPA.

### VI. TERMINATION AND SATISFACTION

The Respondent's obligations under these Orders 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."

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

### 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 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 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 Respondent's operation of its Facility. 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  
Northeast District Office  
Division of Solid and Infectious Waste Management  
Attn: Unit Supervisor, DSIWM  
2110 East Aurora Road  
Twinsburg, OH 44087

and

Trumbull County Health Department  
Attn: Health Commissioner  
176 Chestnut N.E.  
Warren, OH 44483

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 Respondent for noncompliance with these Orders.

Except as provided in Section XII. Waiver, nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Respondent to perform

additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Ohio EPA specifically reserves the right to require Respondent to take additional action to address the violations which are the subject of these Orders as a result of any threat to human health or safety or the environment as a result of slope stability concerns at the Facility. Nothing herein shall restrict the right of the Respondent 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 Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

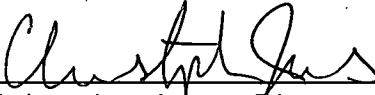
#### XI. INDEMNIFICATION

Respondent agrees to indemnify, save, and hold harmless Ohio EPA from any and all claims or causes of action arising from, or related to, any acts or omissions of Respondent and/or Ohio EPA, its officers, employees, agents, representatives, or assigns, in carrying out any activities pursuant to these Orders. However, nothing in these Orders shall render Respondent liable to indemnify Ohio EPA for any acts or omissions by Ohio EPA, its officers, employees, agents, representatives, or assigns, which are outside the scope of employment of its officers, employees, agents, representatives or assigns or where such act or omission was conducted with malicious purpose, in bad faith, or a wanton or reckless manner. Ohio EPA agrees to provide notice to the Respondent within thirty (30) days of receipt of any claim which may be the subject of indemnity as provided in this Section, and to cooperate with Respondent in the defense of any such claim or action against Ohio EPA. Ohio EPA shall not be considered a party to and shall not be held liable under any contract entered into by Respondent in carrying out the activities pursuant to these Orders.

#### 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 ORDERED:**

  
\_\_\_\_\_  
Christopher Jones, Director  
Ohio Environmental Protection Agency

6-12-02  
Date

#### XIII. 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 Respondent agrees that these Orders are lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondent agrees to comply with these Orders. Compliance with these Orders shall be full accord and satisfaction for the Respondent's liability for the violations cited herein except that Ohio EPA specifically reserves the right to require Respondent to take additional action to address the violations which are the subject of these Orders as a result of any threat to human health or safety or the environment as a result of slope stability concerns at the Facility.

The Respondent hereby waives the right to appeal the issuance, terms and service of these Orders, and the Respondent hereby waives 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 Respondent agree that in the event that these Orders 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 these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

**IT IS SO AGREED:**

WCI Steel, Inc. (Respondent)

By: ER Caine

6/05/2002  
Date

Title: President & CEO

Ohio Environmental Protection Agency

Christopher Jones  
Christopher Jones, Director

6-12-02  
Date