



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

April 28, 2017

Ms. Barbara Chapman
95 Villa Side Lane
Columbus, Ohio 43213

**Re: Scarberry & Son Demolition Inc.
Director's Final Findings and Orders (DFFO)
DFFO
Construction & Demolition Debris
Lawrence County
CDDL018838**

Subject: Scarberry and Son Demolition Inc. Director's Findings & Orders

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Scarberry and Sons Demolition Inc.

If you have any questions, please contact Robin Nichols at (614) 644-337.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dearth". The signature is fluid and cursive.

Brian Dearth, Administrative Officer 1
Division of Materials & Waste Management

Enclosure

ec: Kelly Jeter, DMWM, CO
Teri Finrock, Legal
Robin Nichols, Legal
Carl Mussenden, DMWM, CO
Joe Goicochea, DMWM, SEDO
Dan Bergert, DMWM, SEDO

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Scarberry & Son C&DD Landfill	:	
Alta L. Scarberry	:	<u>Director's Final Findings</u>
6508 Little Seven Mile Road	:	<u>and Orders</u>
Huntington, WV 25702-9762	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

Ohio EPA APR 28 '17
Entered Directors Journal

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Alta L. Scarberry ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3714.12 and 3745.01, and the rules promulgated thereunder.

II. PARTIES BOUND

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

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3714. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Scarberry & Son construction and demolition debris ("C&DD") Landfill ("Facility") is a "construction and demolition debris facility" as that term is defined in OAC Rule 3745-400-01(G) located on the south side of Private Road #2546, approximately 0.1 mile east of State Route 775, Lawrence County, Proctorville, Ohio.
2. Scarberry & Son Demolition Inc. ("Scarberry & Son") was a for profit corporation

listed with the West Virginia Secretary of State effective April 21, 1987, and terminated September 13, 2013.

3. The Facility is located on parcels 23-033-1801.000 and 23-034-1501.000, being 15.02 acres more or less ("Property"), as described by the Lawrence County Auditor. Respondent Alta L. Scarberry holds title to the Property on which the Facility is located and is the "owner" as that term is defined in OAC Rule 3745-400-01(EE).
4. The Lawrence County Health Department is not on the Director's list of approved health departments. Thus, Ohio EPA is the "licensing authority," as that term is defined in OAC Rule 3745-400-01(Y).
5. On March 20, 1998, Ohio EPA issued the "initial license," as that term is defined by OAC Rule 3745-400-01(U), for the Facility and issued the last Facility license in 2012.
6. The Facility ceased to accept C&DD in 2011.
7. Pursuant to OAC Rule 3745-400-12(B)(2), final closure of a facility is mandatory when a license issued to a facility has expired and a renewal license has not been applied for in the manner prescribed in OAC Chapter 3745-37.
8. Ohio EPA did not receive a 2014 license application for the Facility, triggering mandatory closure obligations.
9. In violation of OAC Rule 3745-400-12(E)(8), Respondent failed to complete mandatory closure of the Facility by December 31, 2014.
10. Respondent is a "person" as that term is defined by ORC Section 3714.01(H) and OAC Rule 3745-400-01(DD).
11. In late 2014, Respondent's daughter and son-in-law ("the Chapmans") contacted Ohio EPA on Respondent's behalf regarding closure of the Facility. Ms. Chapman holds durable power of attorney over Respondent's affairs.
12. The Chapmans had the Facility mowed in 2014, but in 2015 it was communicated to Ohio EPA that there are no financial resources to complete closure of the Facility.
13. Ohio EPA has drawn upon the Facility's financial assurance letter of credit and placed the funds in a standby trust. There is approximately \$82,000 in the trust.
14. On May 9, 2016, Ohio EPA informed Respondent of the failure to complete mandatory closure, a violation of OAC Rule 3745-400-12(E)(8), by a notice of

violation letter.

15. To date, Respondent has not completed closure of the Facility.
16. By electronic mail dated April 7, 2017, Mr. Chapman submitted Respondent's financial information to Ohio EPA. Upon review of the submittal, Ohio EPA has determined that Respondent is unable to fund closure of the Facility.

V. ORDERS

Respondent shall achieve compliance with Chapter 3714 of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Not later than ninety (90) days after the effective date of these Orders, Respondent shall, in accordance with OAC Rule 3745-400-12(E)(8) and (9), file the following with the Lawrence County Recorder:
 - a. A plat of the Facility and information describing the acreage, exact location, depth, volume, and nature of the placed debris;
 - b. A notation on the deed to the Property instrument, alerting in perpetuity any potential purchaser of the Property that the land has been used as a construction and demolition debris facility. The notation shall include information describing the acreage, exact location, depth, volume, and nature of the placed debris;
2. By entry into these Orders, Respondent agrees to grant access to the Property to Ohio EPA and its authorized representatives or contractors to conduct remediation, closure activities, or post-closure care activities, which may include improving or building necessary roads on, over, or across the Property for the purpose of conducting those activities at the Facility. At the conclusion of any remediation, closure, or post-closure care activities at the Facility by Ohio EPA or its authorized representatives or contractors, Respondent agrees that all improvements shall attach to the Property.
3. Respondent hereby agrees to hold the Director; Ohio EPA; and Ohio EPA's employees, authorized representatives, and contractors harmless for actions taken in accordance with these Orders, and for any action not taken at the Property.
4. Should Ohio EPA utilize public funds for any remediation or closure activity at the Property, Respondent agrees that the Director may record those costs incurred while performing those activities, including costs for labor, materials, and contract services, at the office of the Lawrence County Recorder with the Property's deed. Respondent agrees that the costs so recorded shall constitute a lien against the

Property until discharged. Respondent agrees not to dispute the validity of any lien filed in accordance with these Orders, either in law or equity.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders, and the Chief of the Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent, in writing, of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by 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 party to these Orders, for any liability arising from, or related to, 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 to these Orders 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.

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 agree 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.

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

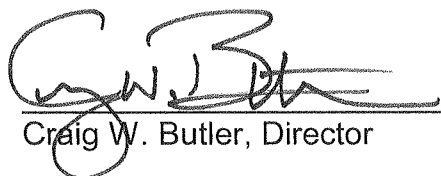
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

Xiii. SIGNATORY AUTHORITY

Each undersigned 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



Craig W. Butler, Director

