



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

September 20, 2017

Wastetran, LTD  
c/o Barton F. Carmichael  
4010 Brush Road  
Richfield, Ohio 44127

**Re: Wastetran, LTD  
Director's Final Findings and Orders (DFFO)  
DFFO  
Municipal Solid Waste Landfills  
Cuyahoga County  
MSWL021688**

**Subject: Wastetran, LTD Director's Final Findings & Orders**

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Wastetran LTD.

If you have any questions, please contact Robin Nichols at (614) 644-3037.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Dearth", is written over a faint, larger version of the same signature.

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

Enclosure

ec: Robin Nichols, Legal  
Carl Mussenden, DMWM, CO  
Kelly Jeter, DMWM, CO  
Bruce McCoy, DMWM, CO  
Jarnal Singh, DMWM, NEDO  
Karen Naples, DMWM, NEDO  
Josh Adams, DMWM, NEDO

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Wastetran, LTD  
c/o Barton F. Carmichael  
4010 Brush Road  
Richfield, Ohio 44127

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Director's Final Findings  
and Orders

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Wastetran, LTD ("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, 3734.13, and 3745.01, and the rules promulgated thereunder.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent 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 Chapters 3714. and 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is an active limited partnership registered with the Ohio Secretary of State. Barton F. Carmichael is a general partner of Respondent.
2. Respondent is a "person" as that term is defined in ORC Section 3734.01(H) and OAC Rule 3745-400-01(DD).

3. Respondent asserts that it runs a construction and demolition debris processing business at 7415 Bessemer Avenue in Cleveland, Ohio (the "Facility"). The Facility is located on approximately 4.4 acres of real property, which is owned by 7500 Bessemer Corporation and is identified by the Cuyahoga County Fiscal Officer as Parcel No. 12523031.
4. The Cleveland Department of Public Health ("CDPH") is on the Director's list of approved health departments and has the authority to enforce solid waste and construction and demolition debris laws and rules within its jurisdiction.
5. The Facility is neither licensed nor permitted as a construction and demolition debris ("C&DD") facility or a solid waste disposal facility.
6. ORC 3714.06(A) states, in part, that "no person shall operate or maintain a construction and demolition debris facility without an annual construction and demolition debris facility operation license issued by the board of health of the health district in which the facility is located or, if the facility is located in a health district that is not on the approved list under section 3714.09 of the Revised Code, from the director of environmental protection."
7. OAC Rule 3745-37-01(C) states, in part, that "no person shall establish, modify, operate or maintain a construction and demolition debris facility without a construction and demolition debris facility license issued by the licensing authority except as otherwise specified in this rule."
8. OAC Rule 3745-400-01(D)(3) defines disposal as "the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any construction and demolition debris into or on any land or ground or surface water or into the air, except if the disposition or placement constitutes storage, reuse, or recycling in a beneficial manner."
9. OAC Rule 3745-400-01(I)(2) defines illegal disposal as "the disposal of construction and demolition debris at any place other than a construction and demolition debris facility operated in accordance with Chapter 3714. of the Revised Code, this chapter, and Chapter 3745-37 of the Administrative Code, a solid waste disposal facility operated in accordance with Chapter 3745-27 of the Administrative Code, and licensed in accordance with Chapter 3745-37 of the Administrative Code, or as otherwise authorized by this chapter."
10. OAC Rule 3745-400-04(B) provides that "[n]o person shall conduct or allow illegal disposal of construction and demolition debris."
11. ORC Chapter 3734.02(C) states that "no person shall establish a new solid waste facility...without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director...."

12. ORC Chapter 3734.05(A)(1) states that "no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code."
13. ORC 3734.01 defines "Open dumping" as ... "the depositing of ... solid wastes ... onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code. OAC Rule 3745-27-01(O)(4)(a) also defines "open dumping" as "[t]he deposition of solid wastes ... on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745-30, and 3745-37 of the Administrative Code."
14. ORC Section 3734.03, states that "[n]o person shall dispose of solid wastes by open burning or open dumping," and OAC Rule 3745-27-05(C), provides that "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734, of the Revised Code, and shall submit verification that the solid waste has been properly managed."
15. OAC Rule 3745-37-01(A) states that "no person shall conduct municipal solid waste landfill...operations without possessing a separate, valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district."
16. OAC Rule 3745-27-05(C) states that "no person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance with Chapter 3734. of the Revised Code, and shall submit verification that the solid waste has been properly managed."

## **OHIO EPA INSPECTIONS AND NOTICES OF VIOLATIONS**

17. On July 6, 2016, CDPH and Ohio EPA conducted a complaint investigation at the Facility and observed two piles of solid waste open dumped at the Facility and numerous piles of C&DD illegally disposed at the Facility both inside and outside of structures, in violation of OAC Rules 3745-27-05(C) and 3745-400-04(B), respectively.

On August 2, 2016, Ohio EPA informed Respondent of these violations in a notice of violation ("NOV") letter.

18. Ohio EPA conducted additional inspections of the Facility on December 28, 2016 and January 25, 2017 and observed that solid waste and C&DD continued to be open dumped and illegally disposed both inside and outside of structures, in violation of OAC Rules 3745-27-05(C) and 3745-400-04(B), respectively. One of the solid waste piles was approximately 7,500 square feet and the other pile measured approximately 3,700 square feet. One of the piles of C&DD was approximately 19,000 square feet and the other pile measured approximately 11,000 square feet.

Ohio EPA informed Respondent of these continuing violations in a NOV letter dated February 1, 2017.

19. Ohio EPA conducted additional inspections of the Facility on February 16, 2017 and February 28, 2017 and observed that solid waste and C&DD continued to be open dumped and illegally disposed both inside and outside of structures, in violation of OAC Rules 3745-27-05(C) and 3745-400-04(B), respectively.

On March 6, 2017, Ohio EPA again informed Respondent of these continuing violations in a NOV letter.

20. On March 7, 2017, Ohio EPA received an email from the Respondent that outlined a schedule for waste removal. The schedule provided that the solid waste pile open dumped outside the building was to be removed by April 21, 2017, and the C&DD pile illegally disposed outside the building would be removed by June 19, 2017.

The proposed schedule did not provide a timeline for the removal of the solid waste and C&DD inside the buildings.

21. Ohio EPA conducted additional inspections of the Facility on March 16, 2017 and March 24, 2017 and observed that solid waste and C&DD continued to be open dumped and illegally disposed both inside and outside of structures, in violation of OAC Rules 3745-27-05(C) and 3745-400-04(B), respectively.

On March 31, 2017, Ohio EPA again informed Respondent of these continuing violations in a NOV letter.

22. On May 18, 2017, Ohio EPA conducted another inspection and observed that solid waste and C&DD continued to be illegally disposed both inside and outside of structures, in violation of OAC Rules 3745-27-05(C) and 3745-400-04(B), respectively.

On June 12, 2017, Ohio EPA again informed Respondent of these continuing violations in a NOV letter.

23. On August 11, 2017, Ohio EPA conducted a site visit and observed that the following materials had accumulated at the Facility:
  - A. Approximately four thousand seven hundred (4,700) cubic yards of solid waste, with approximately one thousand three hundred (1,300) cubic yards of that amount disposed outdoors; and
  - B. An estimated eighteen thousand three hundred (18,300) cubic yards of unprocessed C&DD, with approximately twelve thousand five hundred (12,500) cubic yards of that amount disposed outdoors.

#### **V. ORDERS**

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

1. Beginning on the effective date of these Orders, Respondent shall maintain a daily log for the Facility (Attachment A), recording information related to all incoming loads of unprocessed C&DD, and all material being removed for recycling, reuse, or disposal. Respondent shall maintain copies of the daily log and shall make them available to Ohio EPA for inspection and/or copying upon request.
2. Not later than November 1, 2017, Respondent shall remove not less than two thousand four hundred (2,400) cubic yards of solid waste from the Facility, including all solid waste disposed outdoors. Respondent shall transport all solid waste removed pursuant to this Order to a recycler, licensed transfer facility, licensed disposal facility, or reuse/manufacturing facility.
3. Not later than November 1, 2017, Respondent shall remove not less than two thousand five hundred (2,500) cubic yards of the unprocessed C&DD disposed outdoors. Respondent shall transport all unprocessed C&DD removed pursuant to this Order to a recycler, licensed transfer facility, licensed disposal facility, or reuse/manufacturing facility. To meet this requirement, Respondent may include any unprocessed C&DD that was removed between August 11, 2017 and October 31, 2017 from the approximately twelve thousand five hundred (12,500) cubic yards of unprocessed C&DD identified in Finding No. 23.B.
4. Beginning not later than November 1, 2017 and ending not later than May 14, 2018, Respondent shall ensure that not more than ten thousand (10,000) cubic yards of unprocessed C&DD exists outdoors at the Facility at any time.

5. Beginning not later than November 1, 2017, Respondent shall ensure all of the following occur at the Facility:
  - A. All incoming loads of unprocessed C&DD are unloaded, processed, and stored under roof;
  - B. All solid waste removed from unprocessed C&DD (excluding scrap tires) is stored in not more than three (3) forty cubic yard metal containers, prior to removal for disposal; and
  - C. All scrap tires removed from unprocessed C&DD are stored in a single metal container prior to removal for proper disposal.
6. Not later than May 15, 2018, Respondent shall remove all remaining solid waste open dumped at the Facility. Respondent shall transport all solid waste removed pursuant to this Order to a recycler, licensed transfer facility, licensed disposal facility, or reuse/manufacturing facility.
7. Not later than May 15, 2018, Respondent shall remove not less than an additional five thousand (5,000) cubic yards of the unprocessed C&DD disposed outdoors. Respondent shall transport all unprocessed C&DD removed pursuant to this Order to a recycler, licensed transfer facility, licensed disposal facility, or reuse/manufacturing facility.
8. Beginning not later than May 15, 2018 and ending not later than December 14, 2018, Respondent shall ensure that not more than five thousand (5,000) cubic yards of unprocessed C&DD exists outdoors at the Facility and shall ensure that not more than nine thousand (9,000) cubic yards of unprocessed C&DD exists at the Facility under roof.
9. Not later than December 15, 2018, Respondent shall remove the remaining unprocessed C&DD disposed outdoors at the Facility. Respondent shall transport all unprocessed C&DD removed pursuant to this Order to a recycler, licensed transfer facility, licensed disposal facility, or reuse/manufacturing facility.
10. Beginning on August 1, 2019, and continuing into the future, Respondent shall ensure that no more than five thousand (5,000) cubic yards of unprocessed C&DD is present at the Facility at any time and shall unload, process, and store all unprocessed C&DD under roof at the Facility.
11. Respondent shall obtain receipts from each recycler, licensed transfer facility, licensed disposal facility, and reuse/manufacturing facility indicating the amount and type of material received from Respondent. Respondent shall maintain copies of the receipts demonstrating material was removed from the Facility in compliance with Order Nos. 2, 3, 6, 7, and 9 at the Facility and shall make them available to

Ohio EPA for inspection and/or copying upon request.

#### **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 a responsible official of 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, including laws that become effective related to C&DD processing facilities, and the rules promulgated thereunder.

#### **IX. ACCESS**

Ohio EPA shall have access at all reasonable times, including during business hours, to the Facility and any other property to which access is required for the implementation of these Orders, to the extent access to the Facility is controlled by Respondent.

If Respondent fails to comply with these Orders, Respondent agrees to provide access to Ohio EPA and its agents, assigns, contractors, designees, and employees for purposes of the removal and lawful disposal of any such materials. Respondent hereby

waives any right of ownership in any material removed pursuant to this paragraph. Respondent also waives any rights to proceeds from the sale or disposition of those materials. If solid waste or C&DD is removed from the Facility in accordance with this Section, Respondent hereby agrees to hold harmless Ohio EPA and its agents, assigns, contractors, designees, and employees for all activities associated with the removal and disposal.

#### **X. 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.

#### **XI. NOTICE**

All documents required to be submitted by Respondent under to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Materials and Waste Management  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DMWM Supervisor

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

#### **XII. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other rights, privileges, and causes of action, except as specifically waived in Section XIII of these Orders.

#### **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 the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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.

**XIV. EFFECTIVE DATE**

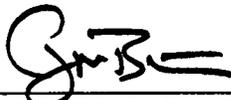
The effective date of the Orders is the date these Orders are entered into the Ohio EPA Director's Journal.

**XV. 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:**

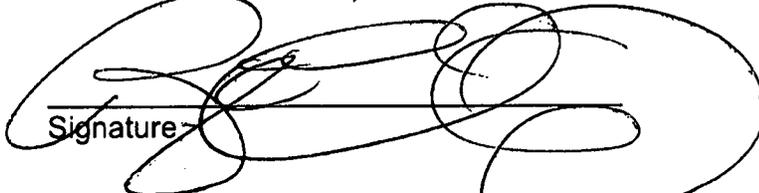
**Ohio Environmental Protection Agency**



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Craig W. Butler, Director

**IT IS SO AGREED:**

**Wastetran, LTD**  
**Barton F. Carmichael, PRESIDENT**



\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 9/14/17

BARTON F. CARMICHAEL - PRESIDENT  
Printed Name

