

IN THE SUPREME COURT OF OHIO

ORIGINAL

National Solid Wastes Management Association,	:	Case No. 2009-0211
Appellant,	:	
-vs-	:	
Stark-Tuscarawas-Wayne Joint Solid Waste Management District,	:	
Appellee.	:	



APPELLANT’S MOTION FOR STAY

Appellant National Solid Wastes Management Association (“NSWMA” or the “Association”) hereby moves this Court to issue its Order staying enforcement of the solid waste management rules challenged by NSWMA in this proceeding until this Court rules upon the merits of the instant appeal. A copy of these rules are attached as Exhibit A. The grounds for this Motion, more fully set forth in the accompanying supporting memorandum, are that such an order is necessary in order to preserve the *status quo* between the parties until the merits of this appeal are resolved.

MEMORANDUM IN SUPPORT OF APPELLANT’S MOTION FOR STAY

A. Facts

The facts underlying this Motion are simple and not in dispute. On November 3, 2006, Appellee Stark-Tuscarawas-Wayne Counties Joint Solid Waste Management District (“STW” or the “STW District”) adopted solid waste management rules pursuant to R.C. 343.01(G). Rule 9.03 imposes restrictions and limitations on the siting of sanitary landfills within the three county

area making up the STW District.¹ Rule 9.02 imposes restrictions, limitations and requirements upon the design and operation of sanitary landfills located within the three county area making up the STW District.² Finally, Rule 9.04 prohibits the disposal within STW of solid waste generated in Ohio's solid waste management districts if the exporting district does not achieve or exceed the same level of solid waste recycling as does the STW District.³

On December 13, 2006, NSWMA filed an action against the STW District in the Stark County Court of Common Pleas. In that action, NSWMA challenged the validity and enforceability of STW's rules on the ground, *inter alia*, that, by statute, the STW District lost the authority to adopt or enforce local solid waste management rules when the Ohio EPA Director adopted a solid waste management plan for the STW District⁴.

The trial court, while ultimately rejecting NSWMA's challenges to STW's local rules, *sua sponte* extended the effective date of Rule 9.04 (STW's recycle rule) from January 1, 2008 until June 1, 2009. The Fifth District Court of Appeals, however, vacated the trial court's decision (thereby rendering the rules immediately enforceable)⁵ on the ground that the Ohio EPA Director was an indispensable party to the litigation below since he had the ultimate power under R.C. 3745.02 to enforce STW's local rules.⁶

¹ For example, Rule 9.03(IV)(B) prohibits siting a sanitary landfill within 2500 feet of an "important historic or cultural site." Also, Rule 9.03(III)(D) requires landfills located within the STW District to be "harmonious and appropriate in appearance with the existing or intended use of the area."

² For example, Rule 9.02(E) requires landfills located within the STW District to install and update equipment to wash the wheels of trucks as they exit the landfill.

³ Actually, Rule 9.04 requires a comparison of the average of the last three years of the STW's solid waste recycling statistics (as approved by Ohio EPA) with the recycling rates being achieved by the exporting district (again, as approved by Ohio EPA) at the time of waste disposal. If the comparison favors the STW District, the waste is barred from disposal with STW.

⁴ See R.C. 343.01(G), which expressly restricts the rule making and enforcement powers of a solid waste management district to those districts with Ohio EPA-approved plans.

⁵ A copy of that court's Final Entry is attached as Exhibit B.

⁶ Notwithstanding the plain language of R.C. 3734.02 which only gives the Ohio EPA Director the power to adopt state-wide rules, not local rules. In its memorandum opposing jurisdiction, STW conceded that the Fifth District's conclusion that the Ohio EPA Director enforces the rules is clearly erroneous.

The STW District chose not to enforce its local rules while this case was being considered by the Court below.⁷ However, the STW District has informed the NSWMA members that it will begin enforcing its rules after June 1, 2009.⁸

B. Argument

The power of this Court to issue orders in aid of, or to preserve its jurisdiction is beyond dispute. It has frequently used that power to issue stay or “stand still” orders requiring that the parties to a pending appeal cease and desist from any activity which would change the *status quo* between them until the Court has rendered judgment of the merits of this pending appeal. See, e.g.: *Murray Energy Corp. v. City of Pepper Pike*, 07/08/2008 Case Announcements, 2008-Ohio-3369 (stay granted to prevent construction of a patio while underlying procedural issues were adjudicated); *Delost v. First Energy Corp.*, 07/15/2008 Case Announcements, 2008-Ohio-3511 (stay granted to prevent removal of trees during appeal of a trial court’s dismissal of the case for lack of jurisdiction); *Kelley v. May Assoc. Credit Union*, 12/03/2008 Case Announcements, 2008-Ohio-6166 (stay granted to prevent the withdrawal of money from an account while the underlying legal issues were appealed); See also, *Laidlaw Waste Systems, Inc. v. Consolidated Rail Corp.* (1999), 85 Ohio St.3d 413, 416, 709 N.E.2d 124 (“The sole purpose of a stay is to preserve the *status quo* pending an appeal so that the appellant may reap the benefit of a potentially meritorious appeal”).

If the STW District is allowed to begin enforcing⁹ its local rules on June 1, 2009, as it has threatened to do, the NSWMA members who own and operate sanitary landfills within STW¹⁰

⁷ See, Affidavit of Tim Vandersall, attached hereto as Exhibit C.

⁸ See, Exhibit C. In an attempt to avoid motions practice before this Court, by letter dated May 7, 2009, the undersigned asked Mr. Connors, STW’s counsel of record in these proceedings, to ask his client to voluntarily stay any enforcement of its rules until this Court decided the instant appeal. As of the date hereof, Mr. Connors has been unable to secure the agreement of his client.

⁹ Under R.C. 343.99, a violation of any one of the STW District’s local rules is punishable by a \$1,000 fine.

will be faced with the untenable choice of violating rules they have asked this Court to invalidate (and be faced with the prospect of paying thousands of dollars in fines as a consequence), or complying with those rules until this Court invalidates them (thereby incurring thousands of dollars in additional expenses or lost income as a consequence), thus losing much of the benefit they hoped to win should they prevail in the pending appeal.

A few examples will serve to illustrate NSWMA's dilemma. The STW District's recycling rule on its face prohibits the disposal of waste at any of the NSWMA member-operated landfills located within the STW District unless the recycling rates achieved by the exporting district (as approved by Ohio EPA) meet or exceed the average recycling rates achieved by the STW District during the three year period prior to disposal.¹¹ This rule poses a number of virtually insurmountable problems for the impacted NSWMA members (and the counties from which they accept waste for disposal): (1) the impacted landfills do not know how to determine whether the test imposed by Rule 9.04 has been satisfied because Ohio EPA does not approve district recycling statistics; it merely publishes them, generally eighteen months or more after they are submitted by the districts to Ohio EPA for its review;¹² (2) based upon the last available data, there are a number of districts that will have to find other landfills to send their waste to, most likely at a higher price, after June 1, 2009 or risk enforcement; and (3) in what it refers to as

¹⁰ Republic Services of Ohio II, LLC, American Landfill, Inc. and Penn-Ohio Company. See, Affidavits of Tim Vandersall (Exhibit C) and Keith B. Kimble (Exhibit D).

¹¹ Although Rule 9.04 allows for a comparison of the STW District's Ohio EPA-approved recycling rate with the exporting district's Ohio EPA-approved "access rate" (the amount of the exporting district's population that has access to recycling centers, recycling boxes and the like), Ohio's solid waste districts do not report to Ohio EPA what access rates they have actually achieved in any calendar year, and Ohio EPA does not publish or approve them. See, Affidavit of Steven White attached hereto as Exhibit E.

¹² As NSWMA explained to the court below (See Appellant's initial appellate brief, p. 15 at footnote 52) the last year for which Ohio EPA has published district recycling statistics is 2005. That necessarily means that the landfills are unable to do the comparison of STW's Ohio EPA approved recycling rates and the three year average achieved by the exporting district for any waste received after that year.

implementing “guidance” adopted by the STW District on September 5, 2008,¹³ STW has expanded the waste disposal prohibition contained in Rule 9.04 to districts who have not asked STW to approve the disposal of their waste within STW regardless of whether they meet or exceed STW’s Ohio EPA-approved recycling statistics.¹⁴ If this Court allows STW to begin enforcing Rule 9.04 on June 1, 2009, the impacted landfills will have to turn away waste from twenty-seven counties (at least fifteen of which only violate STW’s implemented guidance and *not* the provisions of Rule 9.04 itself, or pay thousands upon thousands of dollars in fines).¹⁵

Not only are these landfills at risk after June 1, 2009, if they accept solid waste from districts not on STW’s approved list, but they are also at risk of enforcement under the other STW rules, many of which are difficult to interpret as written. For example, Rule 9.03(E) requires landfills located within the STW District to install equipment to wash the wheels of trucks before they exit the landfills.¹⁶ At least one of the impacted landfills does not have such equipment and has not had a complaint, either from its neighbors or from any local or state public official during the fifty years the landfill has been operating. The impacted landfill estimated the cost of installing such equipment to be about \$250,000.¹⁷

Another provision of the operations rule requires the impacted landfills to submit to the STW District a written Odor Control Plan that has been approved by the local Board of Health. The problem is that nowhere in state law, the STW District local rules, or in rules adopted by any

¹³ Attached hereto as Exhibit F.

¹⁴ See, Vandersall Exhibit C.

¹⁵ See, Affidavit of Steven White attached hereto as Exhibit E.

¹⁶ See, Exhibit A, Rule 9.02(E).

¹⁷ Because of a combination of factors, including the fact that the landfill in question is set back a considerable distance from the nearby public road, State Route 39, the trucks exit and enter the landfill on a paved road of 1.2 miles long, and the internal roadways at the landfill in question are constructed of crushed limestone. In short, no mud is deposited on the nearby public road by trucks leaving the landfill. See, Exhibit D.

of the local Boards of Health is it stated what must be in such a plan in order for it to be approvable.¹⁸

Similarly, Rule 9.03(L) requires the impacted landfills to submit to the STW District an “Airborne Particulate Control Plan as defined by Ohio EPA...” The problem is that there is no such plan titled in that manner which is “defined” or required by Ohio EPA, so the landfills have no real idea how to go about complying with the requirement.¹⁹

STW may argue that a stay is unnecessary because it has issued waivers to all of the potentially effected solid waste districts. The problem with this argument is that (1) the stays that have been issued expire at the end of this year, and the districts that export waste to STW have a statutory obligation²⁰ to plan for where their waste will be disposed of next year which, of course they cannot fulfill without knowing now whether their waste can be disposed of in STW next year; (2) if the impacted landfills face a realistic prospect of losing substantial volumes of waste beginning in January of 2010 because STW declines to issue waivers for calendar 2010, they need to know that now, not next January, so that they can implement plans for finding replacement waste (most likely from out of state)²¹ to avoid significant employee layoffs; and (3) there remain fifteen solid wastes that (a) have historically disposed of solid waste within STW; and (b) have not applied for a waiver; and (4) as far as STW is aware²² the STW District has not issued any waivers from its operations or siting rules.

¹⁸ Nor does Ohio law authorize the local Boards of Health to require or review such plans.

¹⁹ Under certain circumstances, Ohio law and regulation requires sources of particulate air emissions, stack and fugitive, to secure permits to install and permits to operate such source. See R.C. 3784.03 (F)(1) and 3704.05 (A) and (6); OAL §3745-31-02. The landfills do not know if this is being referred to by the rule provision in question.

²⁰ See, R.C. 3734.57(A)

²¹ To avoid a challenge under the Interstate Commerce Clause of the U.S. Constitution, See, *C&A Carbone, Inc. v. Town of Clarkstown* (1994), 511 U.S.697, STW drafted its recycle rule so that it does not apply to solid waste generated outside Ohio.

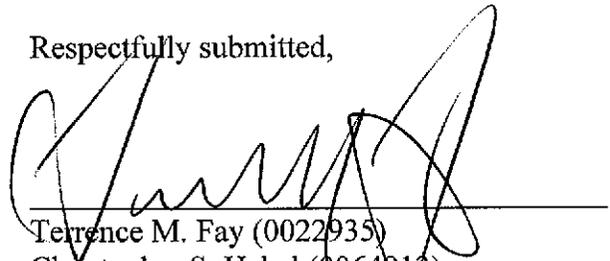
²² See, Exhibit E.

Plainly, an order staying enforcement of the STW District's local rules must be issued "to preserve the status quo pending an appeal so that [NSWMA] may reap the benefit of a potentially meritorious appeal." *Laidlaw Wastes Systems, supra*, the NSWMA members that own and operate landfills within the STW District should not be placed in the untenable position of having to chose between complying with rules which they have every hope will be invalidated when this Court reaches the merits of their appeal or violating the rules and being forced to pay thousand of dollars in fines.

C. Conclusion

For the foregoing reasons, this Court should issue its Order staying enforcement of the STW local rules until it has adjudicated the merits of the pending appeal.

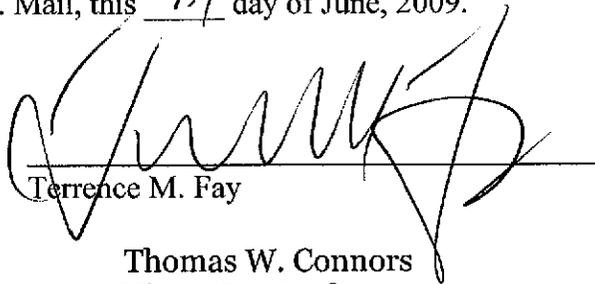
Respectfully submitted,



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CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of Appellant's Motion for Stay was forwarded to the following via regular U.S. Mail, this 14 day of June, 2009.



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Section __: STW District Rules

The following Rules have been adopted by the Board of Directors, as authorized by the Ohio Revised Code, to ensure the implementation of the Solid Waste Management Plan for the STW District.

Any existing Solid Waste Facility in operation as of the adoption date of STW District Rule 9.02, Operational Standards, shall have 180 days to comply with such Rule, unless otherwise stated in the specific Rule, or subpart thereof.

To the extent that the terms of any STW District Rule(s) conflict with the terms of the existing Solid Waste Industry Voluntary Guidelines of July 2003 ("Voluntary Guidelines"), the STW District Rule(s) shall control.

It is the intent of the STW District to enter into Host Agreements with all existing and new Solid Waste Facilities within the STW District. Such Host Agreements may contain certain directives of additional restrictions outside these Rules. All current host agreements shall remain in full force and effect.

The STW District may, by majority vote of the full Board, elect to incorporate into such Host Agreements a waiver of any STW District Rule or subpart thereof if the Board concludes such waiver is in the best interest of the STW District and will assist the STW District in the successful implementation of the Plan and further STW District goals.

If any STW District Rule, or any provision thereof, is held invalid by any court of competent jurisdiction, such ruling shall not affect the validity of any remaining provisions of these Rules.

Rule 9.01 DEFINITIONS

For the purposes of these STW District Rules, the following definitions shall apply:

- A. **Applicant** shall mean a person, firm, entity, municipal corporation, township or other political subdivision that proposes to construct or modify a Solid Waste Facility within the STW District and has submitted an application with regard thereto under Title 3745 of the Ohio Administrative Code, including without limitation an application for a registration certificate, permit-to-install, or alternate infectious waste treatment technology approval in accordance with Chapter 3745-27, 3745-29, or 3745-30 of the Ohio Administrative Code.
- B. **Authorized Maximum Daily Waste Receipts** means the maximum amount of solid waste a solid waste disposal facility may receive or process on any calendar day. The waste receipt limit shall be expressed in tons per day for facilities utilizing scales or cubic yards per day for all other facilities. The tons to cubic yards ratio shall be one ton equals three cubic yards unless the solid waste is baled, in which case the ratio is one ton equals one cubic yard.

- C. **Board** means the Stark-Tuscarawas-Wayne Joint Solid Waste Management District Board.
- D. **General Plans and Specifications** means that information required to be submitted to the Board pursuant to Rule 9.03 Solid Waste Facility Siting Rules, Section III, B.
- E. **Host Agreement** means any agreement between the Solid Waste Management STW District and any Solid Waste Facility within the STW District.
- F. **Host Community** means the unit of local government, such as a city, village or township, in which a Solid Waste Facility is or would be located.
- G. **Modify** shall mean a significant change in the operation of an existing in-District Solid Waste Facility that includes an application to: (1) change the Authorized Maximum Daily Waste Receipt for a solid waste facility; (2) to expand an existing solid waste facility; or (3) to convert a legitimate recycling facility into a transfer station; provided such application was submitted to the Ohio EPA after the effective date of these rules.
- H. **Plan** means the solid waste management plan of the Stark-Tuscarawas-Wayne Joint Solid Waste District, as required in Ohio Revised Code Sections 3734.53 and 3734.54, and any rules promulgated thereunder.
- I. **Person** means any individual, firm, entity, municipal corporation, township or other political subdivision.
- J. **Rule** means the action of the Board in promulgating, adopting and publishing such action as a rule of the STW District authorized by Sections 343.01 (G) and 3734.53 of the Revised Code, as now existing or hereafter amended.
- K. **Siting Rules** shall mean those rules applicable to new or modified Solid Waste Facilities as set forth in Rule 9.03.
- L. **Solid Waste Facility (or Facilities)** shall have the same meaning as defined in Ohio Revised Code 3734.01 (N) to include all solid waste disposal, transfer, recycling, processing, and resource recovery facilities.
- M. **STW District** means the Stark-Tuscarawas-Wayne Joint Solid Waste Management District established by Agreement on November 28, 1988, in accordance with Ohio Revised Code Section 343.01.
- N. **Transfer Facility** has the same meaning as in Ohio Administrative Code §3745-27-01(S)(29).

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- A. **Quiet Enjoyment:** Odors, noise, dust and vibration shall be minimized by the proper use of berms, walls, natural planting screens and soundproofed equipment and buildings. Any onsite landfill operational activities shall not exceed 90 dBA based on an average eight hour weighted day when measured from the affected residences. All road surfaces within the property lines of a Solid Waste Facility shall be paved or graveled to minimize mud and dust.
- B. **Security Lighting:** Any security lighting deemed necessary by the Applicant (or by these Rules) shall be aligned so that no portion of the illuminated field extends into any residential property.
- C. **Fire & Emergency Management Plan:** All Solid Waste Facilities shall have in place a written Fire & Emergency Management Plan that has been submitted to the primarily responsible local fire department. The facility shall incorporate any recommendations suggested by the primary responsible local fire department.
- D. **Litter:** All Solid Waste Facilities shall have in place a Litter Collection Plan which addresses the prompt collection and disposal of on and off-site litter generated as a result of the facility activities, including any such litter deposited along the designated hauling routes leading to the Solid Waste Facility. The Solid Waste Facility operator shall be responsible for the removal and disposal of any such litter deposited along the hauling routes leading to the Solid Waste Facility.
- E. **Vehicle/Wheel Wash:** To prevent mud and dirt from being tracked on to local roads, landfill facility operators must install a multi-stage wheel washing unit approved by the local health department. The first part of the unit shall consist of rumble strips and a tire bath. A truck washing station shall follow the wheel washing unit. All vehicle operators, to the extent that it is practical given weather conditions, shall wash any mud or dirt from their vehicles prior to exiting a Solid Waste Facility.
- F. **Street and Highway Access:** Trucks shall not use private drives or private access routes to or from the Solid Waste Facility property which are within one hundred fifty (150) feet of any existing residence. This provision does not apply to any existing private drives or access routes in use as a means of ingress or egress to or from a Solid Waste Facility as of the date of enactment of this Rule.
- G. **Gates:** The entrance to a Solid Waste Facility shall have a gate which shall be closed and locked at all times that the Solid Waste Facility is not open. Keys for admittance to the Solid Waste Facility shall be given to the primarily responsible local fire department.

- H. **Hours of Operation:** The hours of operation, when a Solid Waste Facility is open to accept waste, other than the maintenance of equipment within a fully enclosed building, shall be conducted only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, and 7:00 a.m. and 3:00 p.m. on Saturdays and legal holidays, except Sunday, unless alternative hours of operation are otherwise authorized by the local Board of Health and approved by the STW District. In times of natural disaster or emergency that necessitate additional hours for waste disposal, the local Board of Health may authorize additional hours to accommodate the STW District's resulting short-term waste disposal needs without prior approval from the STW District. In lieu of complying with this provision, existing Solid Waste Facilities may continue to operate under their respective hours of operation in place at the time of the adoption of these rules.

A sign stating the hours of operation and prohibiting unauthorized dumping (e.g., during non-operating hours or unacceptable waste) shall be placed in a conspicuous location at the entrance to the facility. Solid Waste Facilities shall have qualified personnel on duty at all times during operational hours to direct the operations of the Solid Waste Facility.

- I. **Liability Insurance:** Current copies of any and all policies of liability insurance maintained by a Solid Waste Facility shall be filed with the STW District, including documentation of the approval of the financial assurance mechanism required by Ohio Administrative Code Section 3745-27-16. A Solid Waste Facility shall promptly inform the STW District in writing of the subsequent cancellation or modification of any of the above referenced policies of insurance.

- J. **Ground Water Monitoring:** Each Solid Waste Facility that is required to perform semi-annual ground water monitoring pursuant to Ohio Admin. Code Sec. 3745-27-10 shall comply with this section. Each covered Facility will provide the STW District with thirty (30) days advance written notice of its semi-annual ground water monitoring, and allow for split sampling with the local Board of Health as requested by the STW District. The STW District will bear the costs for any split sample testing by the Board of Health. The covered Facilities shall provide the STW District with copies of any reports regarding the monitoring well testing within thirty (30) days of receipt.

The STW District may request additional ground water testing, the costs for such tests to be borne by the STW District.

- K. **Odor Control Plan:** Each Solid Waste Facility within the STW District shall submit to the STW District a written Odor Control Plan that has been approved by the local certified Board of Health. The Plan shall contain the means by which the Facility will respond to and control odors and airborne particulate matter.

- L. **Airbourne Particulate Control Plan.** The Airbourne Particulate Control Plan as defined by the Ohio EPA shall be submitted to the STW District and monitored by the local air permitting authority.

M. **Overweight Truck Deterrence Plan:** Each Solid Waste Facility within the STW District shall adopt and submit to the STW District a written policy designed to deter the use of the Facility by any truck with a total weight, including truck and load, in excess of the applicable total federal vehicle limit. The policy shall include a procedure incorporating a deterrence system subjecting any landfill bound vehicle weighing over the applicable federal weight limit to deterrents, which shall include, but are not limited to, at least two of the following :

- 1) allowing a local law enforcement officer to monitor infractions on site and issue citations; and
- 2) issuing a written warning to the violating company;
- 3) directing the vehicle to wait for one hour in a staging area prior to unloading;
- 4) for multiple offenses per driver or business within a six-month period, the Facility management may deny the offender(s) access to the landfill.

Each Solid Waste Facility shall annually submit to the STW District a report demonstrating the extent to which its written policy has effectively deterred the use of the Facility by any vehicle with a weight, including truck and load, in excess of the applicable federal limits.

N. **Certified Board of Health Inspection and Testing:** All Solid Waste Facilities within the STW District shall grant Health Department employees access to the Facility at reasonable times in order for the Certified Board of Health to conduct random and/or scheduled inspections. Such inspections may include random testing of the waste materials as requested by the STW District, and/or inspection of the daily operational records of the Facility.

O. **Waste Acceptance Procedures and Notification:** All Solid Waste Facilities within the STW District shall provide to the STW District a copy of the written program for PCB and hazardous waste prevention and detection, which it is required to implement pursuant to Ohio Administrative Code 3745-27-19(L). In addition, each Facility shall provide notice to the STW District upon receipt of a NOV (notice of violation) arising from the acceptance of hazardous waste or PCB regulated wastes. Further, such Facility shall submit any information on detection of PCB's or hazardous wastes to the STW District in the same manner as it is required to give to the EPA or Board of Health under the Ohio Revised Code or Administrative Code.

P. **Separated Recyclables:** Solid Waste Facilities that also operate solid waste collection vehicles within the STW District shall not:

- (1) knowingly incinerate or landfill separated recyclable material without the prior written consent of the STW District; or
- (2) knowingly combine separated recyclable materials with solid waste that is intended for landfilling without the prior written consent of the STW District.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

I. PRECONSTRUCTION APPROVAL REQUIREMENT

No Person shall construct or modify any Solid Waste Facility until the General Plans and Specifications for the proposed Solid Waste Facility have been submitted to and approved by the Board as complying with the Plan or a variance or waiver from these Siting Rules has been granted by a majority vote of the full Board.

II. GENERAL STANDARDS

Unless a variance or waiver has been granted pursuant to Section I, the Board shall not approve the General Plans and Specifications for any proposed Solid Waste Facility, or for the modification of any existing Solid Waste Facility, where the construction and operation of the proposed Solid Waste Facility or modification thereof has not been found to comply with the Plan, including such matters as a determination that the proposed construction or modification will have adverse impacts upon the Board's ability to implement the Plan, will interfere with the Board's obligation to provide for the maximum feasible utilization of existing Solid Waste Facilities within the Solid Waste Management District ("STW District"), will adversely affect the quality of life of residents or will have adverse impacts upon the local community and its resources that cannot be eliminated.

III. PROCEDURES AND STANDARDS FOR EVALUATION

Unless a variance or waiver has been granted by the Board, the following process shall govern proposals for the construction of a new Solid Waste Facility or the modification of an existing Solid Waste Facility within the STW District:

A. Timing of the Submission of Plans and Specifications for Review

Any Person proposing to construct a new Solid Waste Facility or modify an existing Solid Waste Facility within the STW District shall submit to the Board the required information, listed in subsection B below, after the conditional permit to install has been issued by the applicable regional office of the Ohio Environmental Protection Agency ("Ohio EPA").

Permits for the installation or modification of a Solid Waste Facility require a lengthy and considerable technical review by the Ohio EPA to assure compliance with Ohio EPA standards. The time required and the scope of the review may result in significant modifications to the proposed Solid Waste Facility. Those modifications may affect such matters as the size of the Solid Waste Facility, the surface dimensions (or "footprint") of any Solid Waste disposal or transfer areas, the volume of Solid Waste accepted at the Solid Waste Facility on a daily basis, the number and size of vehicles delivering Solid Waste to the Solid Waste Facility, the volume of leachate generated (if the proposed Solid Waste Facility would be a landfill), and other aspects of the Solid Waste Facility that potentially

impact the STW District and its residents. Similar considerations exist with respect to any required zoning permits from the Host Community. Any changes made to the Plans or Specifications, including such changes required by the Director of the Ohio EPA in the application for a permit to install a Solid Waste Facility or by the Host Community, may require that the Applicant's proposal for the Solid Waste Facility be revised by the Applicant and re-evaluated by the Board.

Any subsequent changes to the Plans and Specifications shall be submitted to the Board. If the Board, in its discretion, determines that such changes warrant further review and approval, the Board shall notify the Applicant. Such additional review will be limited to the changes submitted.

B. Required Information

Any Person proposing to construct a new Solid Waste Facility or modify an existing Solid Waste Facility within the STW District shall submit General Plans and Specifications to the Board. The General Plans and Specifications required herein shall be prepared by professional engineers, architects, surveyors, geologists and/or other professionals as required by these rules or as requested by the Board. Such General Plans and Specifications shall include, but are not limited to, the following documents and information:

1. **Type of Solid Waste Facility:** A description of the type of Solid Waste Facility (disposal, transfer, processing, resource recovery, and legitimate recycling facility as defined by Ohio Administrative Code) proposed to be constructed, including, but not limited to: the equipment and technology to be used (such as automated systems, mixed waste processing, or unseparated recyclable materials combined by the generator in a single collection container ("single stream")); and the materials to be accepted at the Solid Waste Facility.
2. **Zoning Approval Documentation:** Documentation from the appropriate local zoning authority evidencing that the Facility conforms to any and all applicable zoning regulations. If the Facility is located in a jurisdiction which has not adopted zoning regulations, the Applicant shall provide an affirmation to that effect.
3. **Site Plan Map:** A site plan showing the placement, height, and size of all natural and manmade features and buildings to be constructed or modified at the proposed site; all proposed means of vehicle ingress and egress to and traffic within the proposed site; the location and dimensions of proposed parking areas, location of abutting public streets, arterial streets, County and township roads, if any, to be constructed; and the location and nature of adjoining development.
4. **Drawings:** Architectural drawings or artist's renderings of the proposed Solid Waste Facility with sufficient detail to depict the appearance of the

proposed Solid Waste Facility upon completion of construction, and in the case of a landfill, surface contours (gradients) both at the start of operation and upon final closure.

5. **Survey**: A survey by a registered surveyor showing: the location of the principal Solid Waste Facility; all proposed Solid Waste management units and supporting or ancillary buildings or structures; the distance from each such unit or improvement to the property lines of the site; and a contour map of the site including existing elevations of the Solid Waste Facility and the approximate final grade and elevations to be established following completion of the disposal areas, if disposal is the proposed use, and the grade and elevation of any proposed buildings or structures to be constructed at the Solid Waste Facility. The survey shall indicate the property uses and the names of property owners for all real property located within one mile of the property lines of the Solid Waste Facility.
6. **Size and Capacity**: The projected size (daily and annual volumes, Authorized Maximum Daily Waste Receipts or processing capacity) of the proposed Solid Waste Facility including, in the case of a landfill, the proposed phases for development (construction) of disposal capacity and the corresponding acreage for each such phase.
7. **Landscaping**: A landscaping plan showing all proposed temporary and permanent landscaping, fencing, berms, and buffers at the Solid Waste Facility.
8. **Lighting**: A lighting plan showing all proposed exterior lighting for structures, onsite roadways, gates and fencing, and identifying the lighting type, height, intensity, and shielding.
9. **Utility Plan**: A plan outlining the necessary public utility services for the proposed Solid Waste Facility including the proposed vendor or public entity provider of such necessary public utility services.
10. **Traffic or Transportation Plan**: A plan showing the proposed routes to and from the proposed Solid Waste Facility and the types and anticipated number and weight of transfer and direct haul vehicles utilizing the proposed Solid Waste Facility, including identification of the main access routes to be used when transfer vehicles, direct haul vehicles, rail cars or other modes of transportation either enter the STW District to deliver Solid Waste or transport Solid Waste generated within the STW District to the Solid Waste Facility.
11. **Hours of Operation**: Identification of the proposed Solid Waste Facility's hours of operation including the projected date for commencement of operation.

12. **Anticipated Source of Solid Waste and Recyclable Materials:** (a) identification of the types of commercial, industrial, agricultural, residential and institutional generators of Solid Waste that are expected to use the Solid Waste Facility and an estimate of the ratio of in District Solid Waste to the total volume of Solid Waste that will be disposed, received, treated, stored or processed at the proposed Solid Waste Facility; and (b) if recycling activities will be conducted at the proposed Solid Waste Facility, a detailed description of such recycling activity, including all materials to be recycled, technology to be utilized and anticipated percentage of Solid Waste reduction and recyclable materials to be recovered as a result of the operation of the proposed Solid Waste Facility.
13. **Control of Onsite Debris:** A description of Applicant's proposed management and control procedures to minimize the potential for debris from the Solid Waste Facility being deposited on arterial streets and County and township roads, and adjacent property.
14. **Other Relevant Information:** Any other information the Applicant or the Board considers necessary for the Board to evaluate in determining whether the proposed Solid Waste Facility complies with each of the criteria specified in these rules.
15. **Applicant's Report:** When the Applicant submits its General Plans and Specifications and provides all other information required by these rules, the Applicant shall, in addition, submit a written report to the Board explaining why, in the Applicant's opinion, the proposal complies with the Plan.

C. Funding of Board Expenses

Pursuant to ORC § 343.0 1(G)(2), the Applicant shall reimburse the Board all reasonable costs and expenses incurred by the Board to review the General Plans and Specifications as provided herein. The Board will submit to the Applicant, a quarterly invoice for the costs and expenses incurred by the Board in its review of the General Plans and Specifications.

Within thirty (30) business days of receiving the Board's invoice, the Applicant will submit a check to the Board (payable to the STW District Treasurer) for the costs and expenses incurred. In the event the Applicant fails to submit payment to the Board within thirty (30) business days of receiving an invoice from the Board, the Board reserves the right to suspend the review of the Applicant's General Plans and Specification until such payment is received by the Board.

D. Evaluation Criteria:

1. The Applicant must demonstrate to the Board, by clear and convincing evidence, that the proposed Solid Waste Facility:

- a. is consistent with the goals, objectives, projections and strategies contained in the Plan and will be operated in compliance with all STW District rules;
- b. will not have an adverse impact on the quality of life within the affected community;
- c. is consistent with the proposed land use of the area in which the Solid Waste Facility would be sited, as determined by the applicable Comprehensive Development Plan or any other applicable planning standards, including but not limited to the planning standards of any other political subdivision that has developed land use and/or zoning plans, and which would be affected by the proposed Solid Waste Facility;
- d. will be constructed, installed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the area;
- e. will be adequately served by, and will not impose excessive additional requirements at public cost for public services, including but not limited to the following: delivery of water; wastewater treatment; maintenance, improvement and reconstruction of arterial streets used by the vehicles delivering Solid Waste to the Solid Waste Facility; emergency services including police and fire protection; and state and local regulatory personnel responsible for enforcement of vehicle weight limitations, security of solid waste transportation regulations (e.g., verification of the use of enclosed Solid Waste containers or tarps on open top vehicles), and the licensing and inspection of Solid Waste Facilities;
- f. will not require converting any County or township road to an arterial street for purposes of truck access to the Solid Waste Facility or, if otherwise, will fully offset the public cost of converting a County or township road to an arterial street and thereafter maintaining such arterial street;
- g. will not be detrimental to the economic welfare of the affected community, when taking into consideration the resulting revenues to and expenditures by the Host Community, job creation, additional tax revenues generated by the Solid Waste Facility, and the effect of the proposed Solid Waste Facility on property values including the impact such valuation will have on the generation of tax revenues for public schools;
- h. will have vehicular approaches, which include but are but not limited to the construction of turn lanes, traffic lights, street signage and on-

site roads to manage traffic, designed to minimize interference with traffic on public streets and highways;

- i. will not result in the material destruction, loss or damage of cultural, natural, scenic, or historic features of the STW District or the affected community, cause or contribute to the taking of any endangered or threatened species of plants, fish or wildlife, or result in the destruction or adverse modification of critical habitat of endangered or threatened species as identified in 50 CFR part 17 ("endangered or threatened species" means any species listed pursuant to Section 4 of the Endangered Species Act, 16 U.S.C. § 1533; "destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using such habitat; and "taking" means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting or attempting to engage in such conduct).

IV. FACILITY SITING REQUIREMENTS:

A proposed new Solid Waste Facility or proposed modification to an existing Solid Waste Facility must meet the following siting requirements, such that:

- A. the Solid Waste Facility shall be located adjacent to a federal, state or county highway such that ingress and egress for the facility does not create traffic through an area developed primarily for residential purposes;
- B. the Solid Waste Facility shall not be located within 2,500 feet (measured from any property line of the Solid Waste Facility) of a historical site identified in a municipal, County or state historic preservation plan, the National Register of Historic Places or the Ohio Registry of Archaeological Landmarks, and shall not cause or contribute to the destruction or loss of any such historic or archaeological site;
- C. any temporary, moveable or permanent building or structure including, without limitation, any landfill cells or other solid waste management units, shall not be located closer than two hundred fifty (250) feet from the property lines of the facility, and, if located within one thousand (1,000) feet of a residence, such building, structure, landfill cell or other solid waste management unit shall be obscured by a suitable barrier not less than ten (10) feet high;
- D. the Solid Waste Facility will include designed sight barriers within the setback area of any portion of the Solid Waste Facility that otherwise lack natural screening. Such sight barriers shall consist of berms parallel to the property lines of the property at least ten (10) feet in height with plantings of evergreen trees (sufficiently spaced two-year transplants or older at the time

of planting which will grow to not less than ten (10) feet in height) or evergreen shrubbery planted in staggered rows on the berms. (Trees or shrubs that comprise a sight barrier must be replaced if they die.);

- E. the Solid Waste Facility shall not be proposed for any location that is within one mile of a school, hospital, or place of worship, County, municipal or township park, licensed child day care facility, public library or, to the extent not included in the preceding list, any other improved parcel where the public gathers, and the construction and operation of a Solid Waste Facility would adversely effect the use and enjoyment of the improved parcel. The requirements of this subsection do not preclude the landfill from providing any of the above referenced public services;
- F. the Solid Waste Facility must comply with all required setbacks from the property lines of the parcel; and
- G. the height of any landfill cells or other waste management units shall conform to the existing topography of the surrounding area, such that the maximum elevation of any cell or unit when closed shall not be more than fifty (50) feet above the highest naturally occurring point within 1000 feet of the Solid Waste Facility boundary.

V. BOARD REVIEW

After the Applicant has provided all of the required information as set forth in Section III, subsection B, the Board will proceed to determine whether the Applicant has adequately demonstrated that the proposed Solid Waste Facility will be constructed or modified and operated in compliance with the standards established herein.

The Board shall appoint a Siting Committee to assist in the review of the General Plans and Specifications. The Board, upon recommendation of the Siting Committee, may request the assistance of the host county Health Department and/or host county Sanitary Engineer to perform or to supervise the review of the General Plans and Specifications for the proposed construction or modification as the same relates to these siting rules. The Board may employ such engineers, consultants and advisors as it deems necessary to assist in the review of the General Plans and Specifications as they relate to these siting rules. The Siting Committee may include, but is not limited to, the following representatives:

- a member of the Board;
- a representative of the host county Board of Health;
- the host county Sanitary Engineer;
- a representative of the host County's Regional Planning Commission;
- a representative of the STW District's Policy Committee;
- if the location proposed for the facility is within a township, at least one township trustee from the proposed host township;
- if the location proposed for the facility is within a municipality, at least one elected officer of that municipality; and

- a representative citizen of the host county as recommended by the Commissioners of the host County.

Within 60 days of the Applicant's submission of the General Plans and Specifications the Board shall determine whether the General Plans and Specifications submitted by the Applicant contain sufficient information for the Board to complete its review of the proposal. In the event it is determined that more information is necessary to complete its review of the proposal, the Board shall notify the Applicant of such request in writing.

The Board will proceed to determine whether the Applicant has demonstrated that the proposed Solid Waste Facility will be constructed or modified and operated in compliance with the standards established herein. The Sanitary Engineer and/or the Siting Committee, if requested by the Board, shall prepare a report summarizing the review. This report shall include a recommendation to the Board as to whether the General Plans and Specifications comply with the Plan and satisfy all other criteria stated herein. The final determination of whether the General Plans and Specifications for the proposed construction or modification demonstrates compliance with the standards herein is the sole discretion of the Board.

VI. DEVELOPMENT AGREEMENT

In the event the Board determines that the proposed construction or modification and operation of a Solid Waste Facility, as set forth in the Applicant's General Plans and Specifications with respect thereto, comply with the Plan and the other requirements and criteria set forth in these rules, the Applicant and the Board shall enter into a development agreement memorializing the terms and conditions that are the basis of the above mentioned determination by the Board. The Applicant and any successor in interest shall have an ongoing obligation to comply with the development agreement, the Plan, and the General Plans and Specifications as submitted and approved by the Board.

VII. WAIVER

The Board may waive, by majority vote of the full Board, the requirement for submission and Board approval of General Plans and Specifications or otherwise grant waivers to these rules if the Board concludes such waiver is in the best interest of the STW District and will assist the Board in the successful implementation of the Plan and further STW District goals with respect to Solid Waste management and Solid Waste reduction activities.

VIII. SEVERABILITY

If any provision hereof is ruled invalid by any court of competent jurisdiction, such decision shall not affect the validity of any other provision hereof. Additionally, in the event any provision hereof is determined to be a design standard within the meaning of ORC §343.01(G)(2), such provision shall not be considered in the Board's review of any proposed Solid Waste Facility under these regulations.

Rule 9.04 Prohibition or Limitation of Out-of-District Wastes

No Solid Waste Facility within the STW District shall accept waste originating in another solid waste district or authority within the State, unless such originating district or authority meets or exceeds the STW District's Recycling Standards. Each originating district or authority's recycling standard is either: (1) the percentage of waste recycled in both (a) the residential/commercial and (b) industrial waste streams; or (2) the access percentage; as is set forth in each respective district or authority's Ohio EPA approved report. For the purpose of this Rule, the STW District Recycling Standards shall be the percentage of waste recycled within the STW District in each category (residential/commercial and industrial), or the access percentage, as established by an average of the STW District's Ohio EPA approved reports for the previous three (3) consecutive calendar years, beginning with the baseline year of 2005. The STW District Recycling Standards will be adjusted accordingly on an annual basis. This Rule 9.04 will be effective January 1, 2008. Nothing in this Rule shall impair any third party's contract rights in existence at the time of the adoption of Rule 9.04.

Rule 9.04 will cease to have effect on December 31, 2010, unless the Board affirmatively acts to renew the Rule, provided that the Board has the written authority from the Ohio EPA to amend, rescind, or adopt rules governing the STW District as of December 1, 2010. If the District is not so authorized as of December 1, 2010, Rule 9.04 shall remain in effect.

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION

Plaintiff-Appellant

-vs-

STARK-TUSCARAWAS-WAYNE
JOINT SOLID WASTE
MANAGEMENT DISTRICT

Defendant-Appellee

JUDGMENT ENTRY

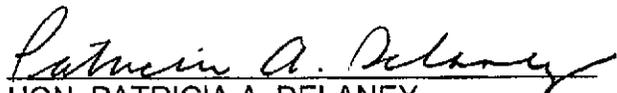
Case No. 2008CA00011

08 DEC 15 PM 2:55
CLERK OF COURT
STARK COUNTY, OHIO

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Stark County Court of Common Pleas is reversed and the matter remanded to that court for further proceedings according to law. Costs assessed to Appellant.


HON. WILLIAM B. HOFFMAN


HON. JULIE A. EDWARDS


HON. PATRICIA A. DELANEY

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NATIONAL SOLID WASTES
MANAGEMENT ASSOCIATION

Plaintiff-Appellant

-vs-

STARK-TUSCARAWAS-WAYNE
JOINT SOLID WASTE
MANAGEMENT DISTRICT

Defendant-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.
Hon. Julie A. Edwards, J.
Hon. Patricia A. Delaney, J.

Case No. 2008CA00011

OPINION

03 DEC 15 PM 2:55
PATRICIA S. DELANEY, J.
CLERK OF COURT OF APPEALS
STARK COUNTY, OHIO

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Civil Case No.
2006CV04842

R

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Defendant-Appellee

For Plaintiff-Appellant

THOMAS W. CONNORS
VICTOR R. MARSH
KRISTIN R. ZEMIS
Black McCuskey Souers & Arbaugh
220 Market Avenue S., Suite 100
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TERRENCE M. FAY
Frost Brown Todd LLC
One Columbus, Suite 2300
10 West Broad Street
Columbus, Ohio 43215-3467

And

CHRISTOPHER S. HABEL
Frost Brown Todd LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202

TRUE COPY TESTED
BY: [Signature]
DATE: 12-15-08

11

[Faint circular stamp]

Hoffman, P.J.

{11} Plaintiff-Appellant National Solid Wastes Management Association appeals the December 18, 2007 Judgment Entry of the Stark County Court of Common Pleas in favor of Defendant-appellee Wayne Joint Solid Waste Management District. The Cuyahoga Solid Waste Management District filed an amicus brief.

STATEMENT OF THE CASE

{12} Appellant National Solid Wastes Management Association (hereinafter "NSWMA") is a nationwide association of solid waste companies. Three of its members own and operate landfills located in the Stark-Tuscarawas-Wayne District (hereinafter "STW District"). These landfills are the American Landfill, owned and operated by American Landfill, Inc., the Countywide Landfill, owned and operated by Republic Services of Ohio II, LLC, and the Kimble Sanitary Landfill, owned and operated by the Penn-Ohio Company.

{13} On December 13, 2006, NSWMA filed a complaint in the Stark County Court of Common Pleas against the STW District seeking a declaration that the STW District local rules were invalid and unenforceable. The matter proceeded to a bench trial. Via Judgment Entry of December 18, 2007, the trial court denied NSWMA's request to declare the STW District's rules void and unenforceable. However, the trial court agreed immediate compliance was "impossible" and extended the effective date of the recycling rule until June 1, 2009.

{14} Appellant now appeals, assigning as error:

{15} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN GRANTING JUDGMENT TO THE STW DISTRICT UPHOLDING THE DISTRICT'S

RULES BECAUSE AS A MATTER OF LAW THOSE RULES BECAME UNENFORCEABLE AFTER OHIO EPA ISSUED ITS SOLID WASTE MANAGEMENT PLAN FOR THE DISTRICT IN DECEMBER 2006.

{16} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN UPHOLDING THE STW DISTRICT'S RECYCLING RULE BECAUSE THAT RULE EXCEEDS THE DISTRICT'S LIMITED RULEMAKING AUTHORITY AND VIOLATES PLAINTIFF'S DUE PROCESS RIGHTS.

{17} "III. THE TRIAL COURT ERRED IN GRANTING JUDGMENT TO THE STW DISTRICT BECAUSE RULES 9.02 AND 9.03 INVADE THE EXCLUSIVE JURISDICTION OF THE OHIO EPA TO REGULATE THE OPERATION AND DESIGN OF LANDFILLS IN OHIO."

{18} In its complaint filed with the Stark County Court of Common Pleas Appellant questions the authority of the STW District to adopt and enforce local rules 9.02, 9.03 or 9.04 restricting the use and operation of landfills in the three-county area.

{19} Solid waste districts are political subdivisions created purely by statute. They operate according to plans developed in conjunction with the Ohio EPA. The required contents of a waste management plan are dictated by statute. Such plans may provide for the adoption of rules by the local district. A statutory timetable dictates when plans must be prepared and submitted to the Director of the Ohio EPA for approval. If the plan is not approved by the Director, the Director is empowered to create a plan for the local district. If the local district fails to implement a plan formulated by the Director, the Director shall issue an enforcement order requiring certain action by the district until an amended plan is put into place.

{¶10} The STW District obtained Ohio EPA approval of its initial solid waste management plan in 1993. However, the District failed to obtain approval of any subsequent 5-year amended plan. Amended plans were due in 1998 and 2003 (the submitted plans were rejected). The Ohio EPA eventually notified the District it was taking over the planning process. Eventually, the STW District and the Director negotiated a "Memorandum of Understanding" (MOU) on September 26, 2005. The MOU set forth the process under which the Ohio EPA would prepare and issue its plan for the District. Over the objections of Appellant NSWMA, the STW District adopted the rules under dispute on November 3, 2006.

{¶11} R.C. Section 3734.02 vests the power of enforcement of said rules with the Director of the Ohio EPA. Upon review of the record, NSWMA filed the case sub judice naming only the Stark-Tuscarawas-Wayne Joint Solid Waste Management District as a party. The complaint does not name the Director of the Ohio EPA. As the Director of the Ohio EPA has the power of enforcement of the rules under dispute, the Director is a necessary party to this declaratory judgment action.

{¶12} As duly pointed out to me by my colleague Judge Edwards, the requirement for joining all necessary parties is jurisdictional and cannot be waived. *Plumbers & Steamfitters Local Union 83 v. Union Local School District Board of Education* (1999), 86 Ohio St.3d 318. A party's failure to join an interested and necessary party constitutes a jurisdictional defect precluding the court from rendering a declaratory judgment. *Id.*; *Portage County Board of Commissioners v. City of Akron* (2006), 109 Ohio St.3d 106.

{¶13} In *Cincinnati v. Whitman* (1975), 44 Ohio St.2d 58, 73 O.O.2d 283, 337 N.E.2d 773, the Ohio Supreme Court examined whether a litigant needed to join the director of the EPA as a party to a suit concerning the condition of Cincinnati's drinking water. The Court held "when declaratory relief is sought which involves the validity or construction of a statute and affects the powers and duties of public officers, such officers should be made parties to the action or proceeding in which the relief is sought." Id. at 61, 73 O.O.2d 283, 337 N.E.2d 773. In that case, the director of the EPA had the exclusive duty to investigate and enforce compliance with statutory water quality standards and, therefore, failure to join the EPA, a necessary party, deprived the trial court of jurisdiction.

{¶14} Based upon the above, Appellant's failure to join the Director of the EPA deprived the court of jurisdiction.

{¶15} Neither does Appellant affirmatively demonstrate in the record the Director, as opposed to the STW District, will or intends to enforce the rules as adopted. Therefore, Appellant has not demonstrated an actual controversy exists between the parties. Actions are moot when they involve no actual genuine controversy which can definitely affect the parties' existing legal relationship, *Lingo v. Ohio Central Railroad, Inc.*, Franklin App. No. 05AP2006, 2006-Ohio-2268, at paragraph 20, citations deleted. Ohio courts have long recognized a court should not entertain jurisdiction over cases without actual controversies, *Tschantz v. Ferguson* (1991), 57 Ohio St.3d 131. NSWMA merely speculates as to the damages members may incur should the Director exercise his power of enforcement. Therefore, any opinion issued by this Court would be advisory in nature.

{¶16} Based on the above, the judgment of the Stark County Court of Common Pleas is reversed and the matter remanded to that court for further proceedings according to law.

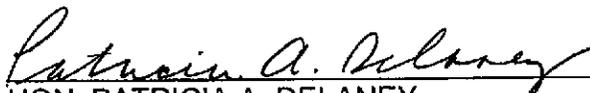
By: Hoffman, P.J. and

Delaney, J. concur,

Edwards, J. concurs separately


HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS

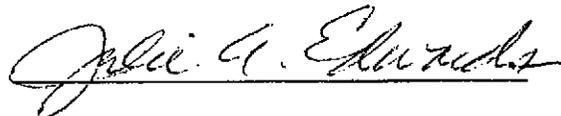

HON. PATRICIA A. DELANEY

EDWARDS, J., CONCURRING OPINION

{¶17} I concur with the majority's disposition of appellant's appeal, but do so based solely on the analysis that a necessary party was not named in this action.

{¶18} The majority, in its opinion, holds that appellant's appeal is moot because appellant has not demonstrated an actual controversy between the parties. On such basis, the majority dismisses the appeal. However, my concern is that the Director of the Ohio EPA was not named in the complaint. As the majority states in its opinion, the Director of the Ohio EPA has the power of enforcement of the rules under dispute. Because appellant is challenging the enforceability of such rules, I believe that the Director of the Ohio EPA was a necessary party to this declaratory judgment action.

{¶19} "A party's failure to join an interested and necessary party constitutes a jurisdictional defect that precludes the court from rendering a declaratory judgment." *Portage Cty. Bd. Of Commrs. v. Akron*, 109 Ohio St.3d 106, 125, 2006-Ohio-954, 846 N.E.2d 478, citing, *Plumbers & Steamfitters Local Union 83 v. Union Local School Dist. Bd. of Edn.* (1999), 86 Ohio St.3d 318, 321, 715 N.E.2d 127. Such defect cannot be waived. *Id.* On such basis, I would reverse the judgment of the trial court and remand the matter for further proceedings.



Judge Julie A. Edwards

IN THE SUPREME COURT OF OHIO

National Solid Wastes Management Association,	:	Case No.
Appellant,	:	
-vs-	:	
Stark-Tuscarawas-Wayne Joint Solid Waste Management District,	:	
Appellee.	:	<u>AFFIDAVIT OF</u> <u>TIM VANDERSALL</u>
	:	

Mr. Tim Vandersall, being duly sworn and cautioned, hereby deposes and states as follows:

1. At all times pertinent to the above-entitled matter, I have been the General Manager of Countrywide Landfill, a sanitary landfill located in Stark County, Ohio, which has been owned and operated by Republic Services of Ohio II, LLC ("Republic") since 1999.

2. On or about May 8, 2009, I met with David Held, the Executive Director of the Stark-Tuscarawas-Wayne Joint Solid Waste Management District ("STW" or the "STW District").

3. During my May 8, 2009, meeting with Mr. Held, he told me that the STW District would begin to enforce the STW local rules which are the subject of the above-referenced litigation on or about June 1, 2009.

4. Further, during my May 8, 2009, meeting with Mr. Held, he told me that the STW District would regard any disposal of solid waste received for disposal by any landfill located within STW from any Ohio solid waste management district that had not applied for and received STW's prior approval in accordance with STW's September 5, 2008, attached

implementation guidance as a violation of STW Local Rule 9.04, even if the exporting district otherwise met the requirements of Rule 9.04.

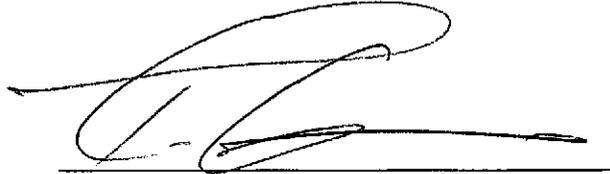
5. Although Countrywide Landfill and Republic are committed to operating in compliance with all applicable laws and administrative regulations, because of the vagueness of some of the STW District's local rules, I am uncertain of how to assure that our operations will be in complete compliance with the rules. For example, while STW's Local Rule 9.04 requires that I turn away shipments of solid waste generated in any Ohio solid waste management district whose Ohio EPA-approved recycling rates do not meet or exceed the average of STW's Ohio EPA-approved recycling rates during the last three years, as far as I know, Ohio EPA has not published or approved district recycling statistics since 2006 for years 2005 and before. Without knowing what recycling rates Ohio EPA approved for either STW or the exporting districts for years 2006 and after, I have no way of knowing whether I can accept any particular load of solid waste that arrives at my landfill for disposal from any place in Ohio other than STW after June 1, 2009, without violating Rule 9.04.

6. Further, comparing recycling statistics submitted to Ohio EPA's solid waste district but not yet published or approved and the STW district's list of districts approved to dispose of solid waste in STW during calendar year 2009, it appears that Countrywide will be barred from taking solid waste from nine counties unless enforcement of Rule 9.04 is halted.

7. Also, STW's operations rules, Rule 9.02, requires that I submit to STW what the rule refers to as an "Odor Control Plan" approved by the local Board of Health and an "Airborne Particulate Control Plan" approved by Ohio EPA. The problem is that neither Rule 9.02 nor any other provision of Ohio law or regulation resembles what must be in these plans, nor do they authorize or empower either the local Board of Health to review and approve such plans.

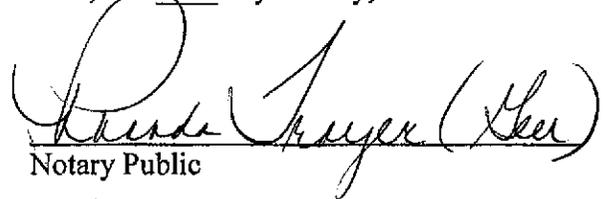
other provision of Ohio law or regulation resembles what must be in these plans, nor do they authorize or empower either the local Board of Health to review and approve such plans.

Further, Affiant Sayeth Naught.



Tim Vandersall, General Manager,
Countrywide Landfill

Sworn and subscribed before me, a Notary Public, this _____ day of May, 2009.



Notary Public

My commission expires 8-17-09

IN THE SUPREME COURT OF OHIO

National Solid Wastes Management Association,	:	Case No. 2009-0211
Appellant,	:	
-vs-	:	
Stark-Tuscarawas-Wayne Joint Solid Waste Management District,	:	
Appellee.	:	<u>AFFIDAVIT OF KEITH B. KIMBLE</u>
	:	

Mr. Keith B. Kimble, being duly sworn and cautioned, hereby deposes and states as follows:

1. At all times pertinent to the above-captioned appeal, I have been President and Chief Executive Officer of Penn-Ohio Coal Company ("Penn-Ohio").
2. Further, at all times pertinent to the above-captioned appeal, Penn-Ohio Coal Company has owned and operated a sanitary landfill located within Tuscarawas County, Ohio.
3. Because Ohio EPA approved recycled statistics by Ohio's solid waste districts are not available after 2005, Penn-Ohio has no way of determining whether loads of solid waste originating outside of the Stark-Tuscawaras-Wayne Joint Solid Waste Management District ("STW"), can be accepted for disposal at its landfill.
4. If STW interprets its recycling rule to bar the disposal at Penn-Ohio's Tuscarawas County landfill of solid waste from districts not on STW's approved list, we will be barred from accepting for disposal solid waste from the following counties that have historically used our landfill: Belmont, Jefferson, Geauga, Trumbull, Mahoning, Delaware, Knox, Marion, Morrow and Richland.

5. Further, Penn-Ohio's Tuscarawas landfill is at risk of enforcement under STW rules other than its recycling rule. For example, one of those rules which NSWMA is challenging in this appeal on our behalf requires that we install a truck wheel wash, which we do not have and do not need, which we estimate could cost as much as \$250,000 in capital investment alone. Such equipment is used at other landfills to prevent dirt from being tracked out onto public roadways from trucks exiting landfills (most landfills have unpaved internal roads, and the wheels of trucks which deliver waste to the landfill operating area become muddy during wet weather).

6. Because our landfill uses crushed limestone for its internal roads, and has 1.2 miles of paved (asphalt) roadway that extends from the public roadway adjacent to our landfill to the beginning of our internal road system, no mud is tracked from our facility to the adjacent public roadway (State Route 39). In the 50 years (or so) that our landfill has been in operation, we have never received a complaint about mud tracks on State Route 39 put down by truck traffic from our landfill.

7. Further, because of the vagueness of a number of STW's other rules, we have no way of assuring that our landfill will be in complete compliance once STW begins enforcing its local rules on June 1, 2009. For example, Local Rule 9.02 appears to require that we obtain the approval of Ohio EPA for an "Airborne Particulates Control Plan" as well as the approval of the Tuscarawas County Board of Health for an "Odor Control Plan". But the rule does not tell us what needs to be included in such plans and, as far as we have been able to ascertain, the public agencies specified do not require, review or approve such plans.

Further Affiant sayeth naught.


Keith B. Kimble

IN THE SUPREME COURT OF OHIO

National Solid Wastes Management Association,	:	Case No. 2009-0211
Appellant,	:	
-vs-	:	
Stark-Tuscarawas-Wayne Joint Solid Waste Management District,	:	
Appellee.	:	<u>AFFIDAVIT OF</u> <u>STEVEN WHITE</u>
	:	

Mr. Steven White, being duly sworn and cautioned, hereby deposes and states as follows:

1. At all times pertinent to the above-entitled matter, I have been President and Chief Executive Officer of Steven H. White & Associates. Since 1990, my company has been a consultant to Allied Waste Industries (“Allied”) providing advice regarding regulatory and governmental affairs mainly as it pertains to environmental matters. Although Allied and Republic Services, another national solid waste company, merged in late 2008, with the surviving company assuming the name of Republic Services, my company continues to provide consulting services to the surviving company.

2. In the course of serving as a consultant to Allied (now Republic), I was asked to become familiar with and provide advice regarding the local solid waste rules adopted by the Stark-Tuscarawas-Wayne Joint Solid Waste Management District (“STW”) in November of 2006.

3. In the course of advising Allied (now Republic), I was called on to evaluate the potential impact of the enforcement of STW local rules upon the inflow of solid waste into STW from other Ohio solid waste management districts.

4. In the course of performing the requested evaluation, I first determined, based upon public information contained in Ohio EPA's files provided by solid waste facilities located in STW, where the solid waste that was disposed of at such facilities during calendar year 2007 originated.

5. Next, I reviewed the recycling statistics reported to Ohio EPA by the State's fifty-one solid waste districts for calendar years 2005, 2006 and 2007.

6. Next, I reviewed the recycling statistics reported by STW to Ohio EPA for the same three years, and computed the three year average(s).

7. I also reviewed the list provided by STW of districts that STW approved for solid waste disposal at STW's three sanitary landfills.

8. Putting all of this together, I concluded that: (A) twenty-seven counties that in 2007 had sent solid waste to one or more of the sanitary landfills located within STW were not on STW's approved list; (B) fifteen of those twenty-seven counties are located within districts that appear to have achieved solid waste recycling rates in calendar year 2007 that meet or exceed the three year average recycle rates achieved by STW for the prior three calendar years.

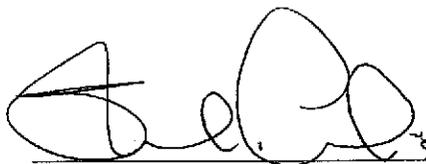
9. Upon information and belief, all of the waivers STW has issued to other Ohio solid waste districts expire at the end of this calendar year.

10. Upon information and belief, STW has not issued any waivers from any of its local rules other than its recycling rule.

11. If STW does not renew the waivers it has issued from the requirements of its recycling rule next January, Republic's Countywide Landfill, and upon information and belief, the other two NSWMA-member landfills located within STW, will seek solid waste from

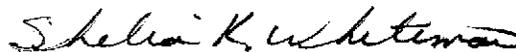
sources not subject to STW's recycling rules such as solid waste generated outside Ohio to replace the solid waste excluded from those landfills by operation of Rule 9.04.

Further, Affiant Sayeth Naught.



Steven H. White, President and Chief
Executive Officer of Steven H. White &
Associates

Sworn and subscribed before me, a Notary Public, this 1st day of June, 2009.



Notary Public



SHELIA K. WHITEMAN
Notary Public, State of Ohio
My commission expires 06-28-09

Section __: STW District Rules With Guidance Document

The following Rules have been adopted by the Board of Directors, as authorized by the Ohio Revised Code, to ensure the implementation of the Solid Waste Management Plan for the STW District.

Any existing Solid Waste Facility in operation as of the adoption date of STW District Rule 9.02, Operational Standards, shall have 180 days to comply with such Rule, unless otherwise stated in the specific Rule, or subpart thereof.

To the extent that the terms of any STW District Rule(s) conflict with the terms of the existing Solid Waste Industry Voluntary Guidelines of July 2003 ("Voluntary Guidelines"), the STW District Rule(s) shall control.

It is the intent of the STW District to enter into Host Agreements with all existing and new Solid Waste Facilities within the STW District. Such Host Agreements may contain certain directives of additional restrictions outside these Rules. All current host agreements shall remain in full force and effect.

The STW District may, by majority vote of the full Board, elect to incorporate into such Host Agreements a waiver of any STW District Rule or subpart thereof if the Board concludes such waiver is in the best interest of the STW District and will assist the STW District in the successful implementation of the Plan and further STW District goals.

If any STW District Rule, or any provision thereof, is held invalid by any court of competent jurisdiction, such ruling shall not affect the validity of any remaining provisions of these Rules.

Rule 9.01 DEFINITIONS

For the purposes of these STW District Rules, the following definitions shall apply:

- A. **Applicant** shall mean a person, firm, entity, municipal corporation, township or other political subdivision that proposes to construct or modify a Solid Waste Facility within the STW District and has submitted an application with regard thereto under Title 3745 of the Ohio Administrative Code, including without limitation an application for a registration certificate, permit-to-install, or alternate infectious waste treatment technology approval in accordance with Chapter 3745-27, 3745-29, or 3745-30 of the Ohio Administrative Code.
- B. **Authorized Maximum Daily Waste Receipts** means the maximum amount of solid waste a solid waste disposal facility may receive or process on any calendar day. The waste receipt limit shall be expressed in tons per day for facilities utilizing scales or cubic yards per day for all other facilities. The tons to cubic yards ratio shall be one ton equals three cubic yards unless the solid waste is baled, in which case the ratio is one ton equals one cubic yard.
- *Please note that for the purpose of this section, Solid Waste Disposal Facility shall have the same meaning as Ohio Administrative Code 3745-27-01(S)24.*
- C. **Board** means the Stark-Tuscarawas-Wayne Joint Solid Waste Management District Board.
- D. **General Plans and Specifications** means that information required to be submitted to the Board pursuant to Rule 9.03 Solid Waste Facility Siting Rules, Section III, B.

- E. **Host Agreement** means any agreement between the Solid Waste Management STW District and any Solid Waste Facility within the STW District.
- F. **Host Community** means the unit of local government, such as a city, village or township, in which a Solid Waste Facility is or would be located.
- G. **Modify** shall mean a significant change in the operation of an existing in-District Solid Waste Facility that includes an application to: (1) change the Authorized Maximum Daily Waste Receipt for a solid waste facility; (2) to expand an existing solid waste facility; or (3) to convert a legitimate recycling facility into a transfer station; provided such application was submitted to the Ohio EPA after the effective date of these rules.
- H. **Plan** means the solid waste management plan of the Stark-Tuscarawas-Wayne Joint Solid Waste District, as required in Ohio Revised Code Sections 3734.53 and 3734.54, and any rules promulgated thereunder.
- I. **Person** means any individual, firm, entity, municipal corporation, township or other political subdivision.
- J. **Rule** means the action of the Board in promulgating, adopting and publishing such action as a rule of the STW District authorized by Sections 343.01 (G) and 3734.53 of the Revised Code, as now existing or hereafter amended.
- K. **Siting Rules** shall mean those rules applicable to new or modified Solid Waste Facilities as set forth in Rule 9.03.
- L. **Solid Waste Facility (or Facilities)** shall have the same meaning as defined in Ohio Revised Code 3734.01 (N) to include all solid waste disposal, transfer, recycling, processing, and resource recovery facilities.
- M. **STW District** means the Stark-Tuscarawas-Wayne Joint Solid Waste Management District established by Agreement on November 28, 1988, in accordance with Ohio Revised Code Section 343.01.
- N. **Transfer Facility** has the same meaning as in Ohio Administrative Code 3745-27-01(S)(29).

** Please note that this definition has been changed, and is now Ohio Administrative Code 3745-27-01(S)28.*

Additional Procedure Definitions:

STW-SWD means the Stark-Tuscarawas-Wayne Joint Solid Waste Management District

OAC means Ohio Administrative Code

ORC means Ohio Revised Code

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- A. **Quiet Enjoyment:** Odors, noise, dust and vibration shall be minimized by the proper use of berms, walls, natural planting screens and soundproofed equipment and buildings. Any onsite landfill operational activities shall not exceed 90 dBA based on an average eight hour weighted day when measured from the affected residences. All road surfaces within the property lines of a Solid Waste Facility shall be paved or graveled to minimize mud and dust.

Procedure:

This section shall be monitored by authorized health department personnel, during routine inspections, and public complaint investigations forwarded from the STW-SWD. Odors, noise, dust, and vibration can be enforced by local nuisance authority under ORC 3707.01, or if specific cause(s) can be identified during inspection, under OAC 3745-27-19(B)3.

ORC 3707.01 - States "The Board of Health of a city or general health district shall abate and remove all nuisances within its jurisdiction. It may by order, compel the owners, agents, assignees, occupants, or tenants of any lot, property, building, or structure to abate and remove any nuisance therein, and prosecute such persons for neglect or refusal to obey such orders."

OAC 3745-27-19(B)3 - Located in the Operational criteria for a sanitary landfill facility, states that "The owner or operator shall operate the facility in such a manner that noise, dust, and odors, are strictly controlled so as not cause a nuisance or health hazard"

Proper road surface conditions to be monitored during routine inspections for any road used by waste hauling vehicles.

If odors, noise, dust, or vibration are noted to be affecting adjacent properties, the Solid Waste Facility shall make necessary adjustments to eliminate the problem as soon as possible.

All findings by the Board of Health's Solid Waste Facility inspection(s) shall be reported to the STW- SWD for review.

All odor complaints should be forwarded to the appropriate agency for review.

"All road surfaces" is intended to mean "roads used for waste hauling purposes only."

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- B. **Security Lighting**: Any security lighting deemed necessary by the Applicant (or by these Rules) shall be aligned so that no portion of the illuminated field extends into any residential property.

Procedure:

This section shall be monitored by Authorized Health Department Personnel, during routine inspections, and public complaint investigations. If light is found to be affecting adjacent properties, the Solid Waste Facility shall make necessary adjustments to eliminate the problem as soon as possible.

All findings by the Board of Health's Solid Waste Facility inspection(s) shall be reported to the STW- SWD for review.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- C. **Fire & Emergency Management Plan**: All Solid Waste Facilities shall have in place a written Fire & Emergency Management Plan that has been submitted to the primarily responsible local fire department. The facility shall incorporate any recommendations suggested by the primary responsible local fire department.

Procedure:

Any Solid Waste Facility shall be responsible for maintaining, and submitting a Fire & Emergency Management plan to the STW-SWD. This plan must be reviewed, and approved in writing by the primarily responsible local fire department. Any alterations requested by the fire department shall be implemented per this rule. The STW-SWD shall confirm that this document is properly submitted and adequate.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- D. **Litter:** All Solid Waste Facilities shall have in place a Litter Collection Plan which addresses the prompt collection and disposal of on and off-site litter generated as a result of the facility activities, including any such litter deposited along the designated hauling routes leading to the Solid Waste Facility. The Solid Waste Facility operator shall be responsible for the removal and disposal of any such litter deposited along the hauling routes leading to the Solid Waste Facility.

Procedure:

Any Solid Waste Facility shall be responsible for maintaining, and submitting a Litter Collection Plan to the STW-SWD for review, and approval. Once approval has occurred, the Solid Waste Facility shall be responsible for the ongoing implementation of this plan.

Authorized Health Department Personnel, and/or Local Law Enforcement shall monitor litter control compliance along any designated hauling route, and adjacent properties on an ongoing basis.

Designated Hauling routes are currently being interpreted as:

American Landfill (in Stark County)

St. Rte. 44

St. Rte. 43

Countywide Recycling & Disposal Facility (in Stark County)

Dueber Avenue

Sherman Church Road

Gracemont Street

Fohl Road

Kimble Sanitary Landfill (in Tuscarawas County)

St. Rt. 39

Crooked Run Road

J&J Canton Transfer Station (in Stark County)

Bolivar Road

These routes may be updated as need arises, or when alteration of truck traffic occurs.

All findings by the Board of Health, and or Local Law Enforcement's Solid Waste Facility inspection(s) shall be reported to the STW-SWD for review.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- E. **Vehicle/Wheel Wash**: To prevent mud and dirt from being tracked on to local roads, landfill facility operators must install a multi-stage wheel washing unit approved by the local health department. The first part of the unit shall consist of rumble strips and a tire bath. A truck washing station shall follow the wheel washing unit. All vehicle operators, to the extent that it is practical given weather conditions, shall wash any mud or dirt from their vehicles prior to exiting a Solid Waste Facility.

Procedure:

Landfill facilities shall construct and maintain an approved Vehicle/Wheel Wash at each exit used by the facility. Authorized Health Department Personnel, and or Local Law Enforcement shall determine appropriate usage of these units.

All findings by the Board of Health, and or Local Law Enforcement's Solid Waste Facility inspection(s) shall be reported to the STW- SWD for review.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- F. **Street and Highway Access:** Trucks shall not use private drives or private access routes to or from the Solid Waste Facility property which are within one hundred fifty (150) feet of any existing residence. This provision does not apply to any existing private drives or access routes in use as a means of ingress or egress to or from a Solid Waste Facility as of the date of enactment of this Rule.

Procedure:

This section will be investigated by Authorized Health Department Personnel, and or Local Law Enforcement when complaint(s) are received.

All findings by the Board of Health, and or Local Law Enforcement's Solid Waste Facility inspection(s) shall be reported to the STW- SWD for review.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- G. **Gates:** The entrance to a Solid Waste Facility shall have a gate which shall be closed and locked at all times that the Solid Waste Facility is not open. Keys for admittance to the Solid Waste Facility shall be given to the primarily responsible local fire department.

Procedure:

Authorized Health Department Personnel shall periodically check to ensure that gates to facility are locked when not in operation. The Solid Waste Facility shall be responsible for issuing keys to the fire department.

All findings by the Board of Health's Solid Waste Facility inspection(s) shall be reported to the STW-SWD for review.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- H. **Hours of Operation:** The hours of operation, when a Solid Waste Facility is open to accept waste, other than the maintenance of equipment within a fully enclosed building, shall be conducted only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday, and 7:00 a.m. and 3:00 p.m. on Saturdays and legal holidays, except Sunday, unless alternative hours of operation are otherwise authorized by the local Board of Health and approved by the STW District. In times of natural disaster or emergency that necessitate additional hours for waste disposal, the local Board of Health may authorize additional hours to accommodate the STW District's resulting short-term waste disposal needs without prior approval from the STW District. In lieu of complying with this provision, existing Solid Waste Facilities may continue to operate under their respective hours of operation in place at the time of the adoption of these rules.

A sign stating the hours of operation and prohibiting unauthorized dumping (e.g., during non-operating hours or unacceptable waste) shall be placed in a conspicuous location at the entrance to the facility. Solid Waste Facilities shall have qualified personnel on duty at all times during operational hours to direct the operations of the Solid Waste Facility.

Procedure:

H) Hours of Operation for the Acceptance of Waste

- 1) *Existing Solid Waste Facility may continue to operate under their current work hours.*
- 2) *All new Solid Waste Facilities, created after November 3, 2006, may only operate during:*
 - a) *Monday through Friday, 7:00am - 6:00pm*
 - b) *Saturday and legal holidays, 7:00am – 3:00pm*
 - c) *Alternative hours must be approved in writing by both the STW-SWD and the licensing local Board of Health.*
 - d) *Local Board of Health may approve alternate operational hours without the STW-SWD approval if:*
 1. *Need for short term waste disposal due to emergency or natural disaster.*
- 3) *Signage must include:*
 - a) *Hours of Operation*
 - b) *Prohibiting unauthorized dumping*
- 4) *Signage will be considered conspicuous and appropriate by the local Board of Health.*

** Please note that local Board's of Health do not establish operational hours for Solid Waste Facilities.*

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- I. **Liability Insurance:** Current copies of any and all policies of liability insurance maintained by a Solid Waste Facility shall be filed with the STW District, including documentation of the approval of the financial assurance mechanism required by Ohio Administrative Code Section 3745-27-16. A Solid Waste Facility shall promptly inform the STW District in writing of the subsequent cancellation or modification of any of the above referenced policies of insurance.

Procedure:

The Solid Waste Facility is responsible for submission of copies of all applicable documents, liability insurance policies, or written certification. (including, but not limited to, financial assurance and policy cancellations and/or modifications, to the STW-SWD.)

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- J. **Ground Water Monitoring:** Each Solid Waste Facility that is required to perform semi-annual ground water monitoring pursuant to Ohio Admin. Code Sec. 3745-27-10 shall comply with this section. Each covered Facility will provide the STW District with thirty (30) days advance written notice of its semi-annual ground water monitoring, and allow for split sampling with the local Board of Health as requested by the STW District. The STW District will bear the costs for any split sample testing by the Board of Health. The covered Facilities shall provide the STW District with copies of any reports regarding the monitoring well testing within thirty (30) days of receipt.

The STW District may request additional ground water testing, the costs for such tests to be borne by the STW District.

Procedure:

J) Ground Water Monitoring

- 1) *For all Semi-Annual ground water monitoring pursuant to OAC 3745-27-10 shall:*
 - a) *Provide thirty (30) days advance written notice of when sampling will occur.*
 - b) *Allow local Board of Health to oversee ground water sampling as requested by the STW-SWD.*
 - c) *Provide local Board of Health with a split sample as requested by the STW-SWD.*
 1. *The STW-SWD will bear costs of testing split sample.*
 2. *Split sample will be secured by Board of Health at time of sampling.*
 3. *Split sample will be submitted to certified laboratory by local Board of Health and results transmitted to the STW-SWD office.*
 4. *All split samples collected for the STW-SWD will be:*
 - a. *Tested at one certified lab contracted by the STW-SWD.*
 - b. *Contracted lab and the STW-SWD will determine:*
 - i. *Consistent testing procedures*
 - ii. *Consistent testing parameters*
 - d) *All semi-annual groundwater monitoring test reports received by the Solid Waste Facility must submit all copies of the result(s) and/or report(s) to the STW-SWD within thirty (30) days of receipt.*
- 2) *The STW-SWD may request additional testing at any time at the cost of the STW-SWD.*

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- K. **Odor Control Plan:** Each Solid Waste Facility within the STW District shall submit to the STW District a written Odor Control Plan that has been approved by the local certified Board of Health. The Plan shall contain the means by which the Facility will respond to and control odors and airborne particulate matter.

Procedure:

- K) Odor Control Plan may be required by the STW-SWD Board during the first two (2) years of the implementation of these rules if a nuisance level is achieved.***
- 1) *Once required by the STW-SWD Board: The facility must submit an approved odor control plan to the STW-SWD along with the approval letter from the local Board of Health.*
- a) *Approved Odor Control Plans must include what steps must/will be taken when the following action levels are met outside the solid waste facility property:*
- 0 – No odor present.*
 - 1 – An odor that would ordinarily not be noticed by the average person but could be noticed by local Board of Health authorized personnel or hypersensitive individual.*
 - 2 – An odor of moderate intensity that would be readily detected and would be regarded with disfavor.*
 - 3 – An odor of such intensity that the air would be absolutely unfit to breath.*
- b) *Airborne particulate issues will be handled under the STW-SWD rule 9.02 (L) and OAC 3745-27-19 (B) (3)*
- 2) *Any and all alterations or modifications of this plan require written approval of the local Board of Health and the STW-SWD prior to implementation.*

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- L. **Airborne Particulate Control Plan.** The Airborne Particulate Control Plan as defined by the Ohio EPA shall be submitted to the STW District and monitored by the local air permitting authority.

Procedure:

Clear enough no addition procedure needed.

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

M. **Overweight Truck Deterrence Plan:** Each Solid Waste Facility within the STW District shall adopt and submit to the STW District a written policy designed to deter the use of the Facility by any truck with a total weight, including truck and load, in excess of the applicable total federal vehicle limit. The policy shall include a procedure incorporating a deterrence system subjecting any landfill bound vehicle weighing over the applicable federal weight limit to deterrents, which shall include, but are not limited to, at least two of the following :

- 1) allowing a local law enforcement officer to monitor infractions on site and issue citations; and
- 2) issuing a written warning to the violating company;
- 3) directing the vehicle to wait for one hour in a staging area prior to unloading;
- 4) for multiple offenses per driver or business within a six-month period, the Facility management may deny the offender(s) access to the landfill.

Each Solid Waste Facility shall annually submit to the STW District a report demonstrating the extent to which its written policy has effectively deterred the use of the Facility by any vehicle with a weight, including truck and load, in excess of the applicable federal limits.

Procedure:

- A) *A written plan shall be submitted to the STW-SWD outlining a Deterrence Policy for vehicles over the federal weight limits.*
 - 1) *Plan must include at least two of the following:*
 - a) *Allowing a local law enforcement officer to monitor infractions on site and issue citations.*
 - b) *Issuing a writing warning to the violating company.*
 - c) *Directing the vehicle to wait for one (1) hour in a staging area prior to unloading.*
 - d) *For multiple offenses per driver or business within a six (6) month period, the facility management may deny the offender(s) access to the landfill.*
 - 2) *The STW-SWD will give written approval of the plan to the Solid Waste Facility.*
- B) *Document of each overweight event shall be submitted to the STW-SWD in an annual report including:*
 - 1) *Date and Time*
 - 2) *Owner/Operator Name*
 - 3) *Truck Identification Number*
 - 4) *Vehicle Weight*
- C) *These documents shall be kept up to date and available for review by the STW-SWD Executive Director or other authorized agency to ensure compliance with this section.*

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- N. **Certified Board of Health Inspection and Testing:** All Solid Waste Facilities within the STW District shall grant Health Department employees access to the Facility at reasonable times in order for the Certified Board of Health to conduct random and/or scheduled inspections. Such inspections may include random testing of the waste materials as requested by the STW District, and/or inspection of the daily operational records of the Facility.

Procedure:

N) Certified Board of Health Inspection and Testing

- 1) *All Solid Waste Facilities within the STW-SWD shall grant local Board of Health authorized personnel access to the Solid Waste Facility.*
 - a) *A certified local Board of Health includes only the Solid Waste Facilities licensing local Board of Health*
- 2) *Access must be granted for random or schedule inspections. May include:*
 - a) *Random testing of waste stream as requested by the STW-SWD.*
 1. *Sample to be collected by the local Board of Health*
 2. *Sample testing by the STW-SWD contracted laboratory.*
 3. *The STW-SWD will bear all costs related to the sample collecting and testing.*
 - b) *Inspection of the Solid Waste Facilities dialing operating records.*

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- O. **Waste Acceptance Procedures and Notification:** All Solid Waste Facilities within the STW District shall provide to the STW District a copy of the written program for PCB and hazardous waste prevention and detection, which it is required to implement pursuant to Ohio Administrative Code 3745-27-19(L). In addition, each Facility shall provide notice to the STW District upon receipt of a NOV (notice of violation) arising from the acceptance of hazardous waste or PCB regulated wastes. Further, such Facility shall submit any information on detection of PCB's or hazardous wastes to the STW District in the same manner as it is required to give to the EPA or Board of Health under the Ohio Revised Code or Administrative Code.

Procedure:

N) Waste Acceptance Procedures and Notification

- 1) *All Solid Waste Facilities must submit a copy of the Solid Waste Facilities written program for PCB and hazardous waste prevention and detection.*
- 2) *All Solid Waste Facilities, located within the STW-SWD, are required within thirty (30) days to submit copies of all correspondence from the Ohio EPA and local Boards of Health, relating to:*
 - a) *Receipt of NOV for hazardous waste.*
 - b) *Receipt of NOV for PCB related waste*
- 3) *Submission of correspondence must be in the same manner as required in the OAC.*

Rule 9.02 OPERATIONAL STANDARDS

The following standards apply to the operation of Solid Waste Facilities within the STW District:

- P. **Separated Recyclables:** Solid Waste Facilities that also operate solid waste collection vehicles within the STW District shall not:
- (1) knowingly incinerate or landfill separated recyclable material without the prior written consent of the STW District; or
 - (2) knowingly combine separated recyclable materials with solid waste that is intended for landfilling without the prior written consent of the STW District.

Procedure:

J) Separated Recyclables

- 1) *During the routine inspection of Solid Waste Facilities and/or Solid Waste Collection vehicles, if separated recyclable materials are noted or suspected, the local Board of Health authorized personnel may:*
 - a) *Investigate further to determine load content.*
 - b) *If load contest is found to contain unapproved mixing of separated recyclable material:*
 1. *Require removal and recycling of separated recyclable material.*
 2. *Require written documentation that separated recyclable materials have been taken to an approved recycling facility.*
 - c) *The local Board of Health authorized personnel will notify the STW-SWD in writing of the violation.*
- 2) *Solid Waste Facilities and/or Solid Waste Collection vehicles may only mix separated recyclable material with solid waste after written consent from the STW-SWD.*
 - a) *Solid Waste Facilities which fail to meet any criteria of Rule 9.02 by the STW-SWD may be subject to those remedies at law or equity available to the STW-SWD.*

Rule 9.03 SOLID WASTE FACILITY SITING RULES

I. PRECONSTRUCTION APPROVAL REQUIREMENT

No Person shall construct or modify any Solid Waste Facility until the General Plans and Specifications for the proposed Solid Waste Facility have been submitted to and approved by the Board as complying with the Plan or a variance or waiver from these Siting Rules has been granted by a majority vote of the full Board.

Procedure:

A Solid Waste Facility is responsible for submitting to the STW-SWD, any plans to construct or modify their facility. The STW-SWD shall review this information and act in accordance with this requirement. Authorized Health Department Personnel shall document and notify the STW-SWD of any construction or alteration noticed at the facility. The STW-SWD shall then determine compliance with this section.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

II. GENERAL STANDARDS

Unless a variance or waiver has been granted pursuant to Section I, the Board shall not approve the General Plans and Specifications for any proposed Solid Waste Facility, or for the modification of any existing Solid Waste Facility, where the construction and operation of the proposed Solid Waste Facility or modification thereof has not been found to comply with the Plan, including such matters as a determination that the proposed construction or modification will have adverse impacts upon the Board's ability to implement the Plan, will interfere with the Board's obligation to provide for the maximum feasible utilization of existing Solid Waste Facilities within the Solid Waste Management District ("STW District"), will adversely affect the quality of life of residents or will have adverse impacts upon the local community and its resources that cannot be eliminated.

Procedure:

The STW-SWD Board is responsible for all approvals, or denials of Solid Waste Facility proposals within a timely manner, while assuring that such actions comply with all applicable parts of the STW-SWD Plan.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

III. PROCEDURES AND STANDARDS FOR EVALUATION

Unless a variance or waiver has been granted by the Board, the following process shall govern proposals for the construction of a new Solid Waste Facility or the modification of an existing Solid Waste Facility within the STW District:

A. Timing of the Submission of Plans and Specifications for Review

Any Person proposing to construct a new Solid Waste Facility or modify an existing Solid Waste Facility within the STW District shall submit to the Board the required information, listed in subsection B below, after the conditional permit to install has been issued by the applicable regional office of the Ohio Environmental Protection Agency ("Ohio EPA").

Permits for the installation or modification of a Solid Waste Facility require a lengthy and considerable technical review by the Ohio EPA to assure compliance with Ohio EPA standards. The time required and the scope of the review may result in significant modifications to the proposed Solid Waste Facility. Those modifications may affect such matters as the size of the Solid Waste Facility, the surface dimensions (or "footprint") of any Solid Waste disposal or transfer areas, the volume of Solid Waste accepted at the Solid Waste Facility on a daily basis, the number and size of vehicles delivering Solid Waste to the Solid Waste Facility, the volume of leachate generated (if the proposed Solid Waste Facility would be a landfill), and other aspects of the Solid Waste Facility that potentially impact the STW District and its residents. Similar considerations exist with respect to any required zoning permits from the Host Community. Any changes made to the Plans or Specifications, including such changes required by the Director of the Ohio EPA in the application for a permit to install a Solid Waste Facility or by the Host Community, may require that the Applicant's proposal for the Solid Waste Facility be revised by the Applicant and re-evaluated by the Board.

Any subsequent changes to the Plans and Specifications shall be submitted to the Board. If the Board, in its discretion, determines that such changes warrant further review and approval, the Board shall notify the Applicant. Such additional review will be limited to the changes submitted.

B. Required Information

Any Person proposing to construct a new Solid Waste Facility or modify an existing Solid Waste Facility within the STW District shall submit General Plans and Specifications to the Board. The General Plans and Specifications required herein shall be prepared by professional engineers, architects, surveyors, geologists and/or other professionals as required by these rules or as requested by the Board. Such General Plans and Specifications shall include, but are not limited to, the following documents and information:

1. **Type of Solid Waste Facility:** A description of the type of Solid Waste Facility (disposal, transfer, processing, resource recovery, and legitimate recycling facility as defined by Ohio Administrative Code) proposed to be constructed, including, but not

limited to: the equipment and technology to be used (such as automated systems, mixed waste processing, or unseparated recyclable materials combined by the generator in a single collection container (“single stream”)); and the materials to be accepted at the Solid Waste Facility.

2. **Zoning Approval Documentation:** Documentation from the appropriate local zoning authority evidencing that the Facility conforms to any and all applicable zoning regulations. If the Facility is located in a jurisdiction which has not adopted zoning regulations, the Applicant shall provide an affirmation to that effect.
3. **Site Plan Map:** A site plan showing the placement, height, and size of all natural and manmade features and buildings to be constructed or modified at the proposed site; all proposed means of vehicle ingress and egress to and traffic within the proposed site; the location and dimensions of proposed parking areas, location of abutting public streets, arterial streets, County and township roads, if any, to be constructed; and the location and nature of adjoining developments.
4. **Drawings:** Architectural drawings or artist’s renderings of the proposed Solid Waste Facility with sufficient detail to depict the appearance of the proposed Solid Waste Facility upon completion of construction, and in the case of a landfill, surface contours (gradients) both at the start of operation and upon final closure.
5. **Survey:** A survey by a registered surveyor showing: the location of the principal Solid Waste Facility; all proposed Solid Waste management units and supporting or ancillary buildings or structures; the distance from each such unit or improvement to the property lines of the site; and a contour map of the site including existing elevations of the Solid Waste Facility and the approximate final grade and elevations to be established following completion of the disposal areas, if disposal is the proposed use, and the grade and elevation of any proposed buildings or structures to be constructed at the Solid Waste Facility. The survey shall indicate the property uses and the names of property owners for all real property located within one mile of the property lines of the Solid Waste Facility.
6. **Size and Capacity:** The projected size (daily and annual volumes, Authorized Maximum Daily Waste Receipts or processing capacity) of the proposed Solid Waste Facility including, in the case of a landfill, the proposed phases for development (construction) of disposal capacity and the corresponding acreage for each such phase.
7. **Landscaping:** A landscaping plan showing all proposed temporary and permanent landscaping, fencing, berms, and buffers at the Solid Waste Facility.
8. **Lighting:** A lighting plan showing all proposed exterior lighting for structures, onsite roadways, gates and fencing, and identifying the lighting type, height, intensity, and shielding.
9. **Utility Plan:** A plan outlining the necessary public utility services for the proposed Solid Waste Facility including the proposed vendor or public entity provider of such necessary public utility services.

10. **Traffic or Transportation Plan:** A plan showing the proposed routes to and from the proposed Solid Waste Facility and the types and anticipated number and weight of transfer and direct haul vehicles utilizing the proposed Solid Waste Facility, including identification of the main access routes to be used when transfer vehicles, direct haul vehicles, rail cars or other modes of transportation either enter the STW District to deliver Solid Waste or transport Solid Waste generated within the STW District to the Solid Waste Facility.
11. **Hours of Operation:** Identification of the proposed Solid Waste Facility's hours of operation including the projected date for commencement of operation.
12. **Anticipated Source of Solid Waste and Recyclable Materials:** (a) identification of the types of commercial, industrial, agricultural, residential and institutional generators of Solid Waste that are expected to use the Solid Waste Facility and an estimate of the ratio of in District Solid Waste to the total volume of Solid Waste that will be disposed, received, treated, stored or processed at the proposed Solid Waste Facility; and (b) if recycling activities will be conducted at the proposed Solid Waste Facility, a detailed description of such recycling activity, including all materials to be recycled, technology to be utilized and anticipated percentage of Solid Waste reduction and recyclable materials to be recovered as a result of the operation of the proposed Solid Waste Facility.
13. **Control of Onsite Debris:** A description of Applicant's proposed management and control procedures to minimize the potential for debris from the Solid Waste Facility being deposited on arterial streets and County and township roads, and adjacent property.
14. **Other Relevant Information:** Any other information the Applicant or the Board considers necessary for the Board to evaluate in determining whether the proposed Solid Waste Facility complies with each of the criteria specified in these rules.
15. **Applicant's Report:** When the Applicant submits its General Plans and Specifications and provides all other information required by these rules, the Applicant shall, in addition, submit a written report to the Board explaining why, in the Applicant's opinion, the proposal complies with the Plan.

Procedures:

The STW-SWD Board shall review all 9.03 II B criteria, and act according to Rule 9.03 V.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

III. PROCEDURES AND STANDARDS FOR EVALUATION

Unless a variance or waiver has been granted by the Board, the following process shall govern proposals for the construction of a new Solid Waste Facility or the modification of an existing Solid Waste Facility within the STW District:

C. Funding of Board Expenses

Pursuant to ORC § 343.0 1(G)(2), the Applicant shall reimburse the Board all reasonable costs and expenses incurred by the Board to review the General Plans and Specifications as provided herein. The Board will submit to the Applicant, a quarterly invoice for the costs and expenses incurred by the Board in its review of the General Plans and Specifications.

Within thirty (30) business days of receiving the Board's invoice, the Applicant will submit a check to the Board (payable to the STW District Treasurer) for the costs and expenses incurred. In the event the Applicant fails to submit payment to the Board within thirty (30) business days of receiving an invoice from the Board, the Board reserves the right to suspend the review of the Applicant's General Plans and Specification until such payment is received by the Board.

Procedure:

The STW-SWD treasurer shall be responsible for reporting the above information to the STW-SWD Board during their monthly meetings.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

III. PROCEDURES AND STANDARDS FOR EVALUATION

Unless a variance or waiver has been granted by the Board, the following process shall govern proposals for the construction of a new Solid Waste Facility or the modification of an existing Solid Waste Facility within the STW District:

D. Evaluation Criteria:

1. The Applicant must demonstrate to the Board, by clear and convincing evidence, that the proposed Solid Waste Facility:
 - a. is consistent with the goals, objectives, projections and strategies contained in the Plan and will be operated in compliance with all STW District rules;
 - b. will not have an adverse impact on the quality of life within the affected community;
 - c. is consistent with the proposed land use of the area in which the Solid Waste Facility would be sited, as determined by the applicable Comprehensive Development Plan or any other applicable planning standards, including but not limited to the planning standards of any other political subdivision that has developed land use and/or zoning plans, and which would be affected by the proposed Solid Waste Facility;
 - d. will be constructed, installed, operated and maintained to be harmonious and appropriate in appearance with the existing or intended character of the area;
 - e. will be adequately served by, and will not impose excessive additional requirements at public cost for public services, including but not limited to the following: delivery of water; wastewater treatment; maintenance, improvement and reconstruction of arterial streets used by the vehicles delivering Solid Waste to the Solid Waste Facility; emergency services including police and fire protection; and state and local regulatory personnel responsible for enforcement of vehicle weight limitations, security of solid waste transportation regulations (e.g., verification of the use of enclosed Solid Waste containers or tarps on open top vehicles), and the licensing and inspection of Solid Waste Facilities;
 - f. will not require converting any County or township road to an arterial street for purposes of truck access to the Solid Waste Facility or, if otherwise, will fully offset the public cost of converting a County or township road to an arterial street and thereafter maintaining such arterial street;
 - g. will not be detrimental to the economic welfare of the affected community, when taking into consideration the resulting revenues to and expenditures by the Host Community, job creation, additional tax revenues generated by the Solid Waste

Facility, and the effect of the proposed Solid Waste Facility on property values including the impact such valuation will have on the generation of tax revenues for public schools;

- h. will have vehicular approaches, which include but are not limited to the construction of turn lanes, traffic lights, street signage and on-site roads to manage traffic, designed to minimize interference with traffic on public streets.
- i. will not result in the material destruction, loss or damage of cultural, natural, scenic, or historic features of the STW District or the affected community, cause or contribute to the taking of any endangered or threatened species of plants, fish or wildlife, or result in the destruction or adverse modification of critical habitat of endangered or threatened species as identified in 50 CFR part 17 ("endangered or threatened species" means any species listed pursuant to Section 4 of the Endangered Species Act, 16 U.S.C. § 1533; "destruction or adverse modification" means a direct or indirect alteration of critical habitat which appreciably diminishes the likelihood of the survival and recovery of threatened or endangered species using such habitat; and "taking" means harassing, harming, pursuing, hunting, wounding, killing, trapping, capturing or collecting or attempting to engage in such conduct).

Rule 9.03 SOLID WASTE FACILITY SITING RULES

IV. FACILITY SITING REQUIREMENTS:

A proposed new Solid Waste Facility or proposed modification to an existing Solid Waste Facility must meet the following siting requirements, such that:

- A. the Solid Waste Facility shall be located adjacent to a federal, state or county highway such that ingress and egress for the facility does not create traffic through an area developed primarily for residential purposes;
- B. the Solid Waste Facility shall not be located within 2,500 feet (measured from any property line of the Solid Waste Facility) of a historical site identified in a municipal, County or state historic preservation plan, the National Register of Historic Places or the Ohio Registry of Archaeological Landmarks, and shall not cause or contribute to the destruction or loss of any such historic or archaeological site;
- C. any temporary, moveable or permanent building or structure including, without limitation, any landfill cells or other solid waste management units, shall not be located closer than two hundred fifty (250) feet from the property lines of the facility, and, if located within one thousand (1,000) feet of a residence, such building, structure, landfill cell or other solid waste management unit shall be obscured by a suitable barrier not less than ten (10) feet high;

- D. the Solid Waste Facility will include designed sight barriers within the setback area of any portion of the Solid Waste Facility that otherwise lack natural screening. Such sight barriers shall consist of berms parallel to the property lines of the property at least ten (10) feet in height with plantings of evergreen trees (sufficiently spaced two-year transplants or older at the time of planting which will grow to not less than ten (10) feet in height) or evergreen shrubbery planted in staggered rows on the berms. (Trees or shrubs that comprise a sight barrier must be replaced if they die.);
- E. the Solid Waste Facility shall not be proposed for any location that is within one mile of a school, hospital, or place of worship, County, municipal or township park, licensed child day care facility, public library or, to the extent not included in the preceding list, any other improved parcel where the public gathers, and the construction and operation of a Solid Waste Facility would adversely effect the use and enjoyment of the improved parcel. The requirements of this subsection do not preclude the landfill from providing any of the above referenced public services;
- F. the Solid Waste Facility must comply with all required setbacks from the property lines of the parcel; and
- G. the height of any landfill cells or other waste management units shall conform to the existing topography of the surrounding area, such that the maximum elevation of any cell or unit when closed shall not be more than fifty (50) feet above the highest naturally occurring point within 1000 feet of the Solid Waste Facility boundary.

Procedure:

The Solid Waste facility shall provide all applicable information to the STW-SWD Board, so that they can determine if all siting requirements have been met and are in accordance with the STW-SWD Plan.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

V. BOARD REVIEW

After the Applicant has provided all of the required information as set forth in Section III, subsection B, the Board will proceed to determine whether the Applicant has adequately demonstrated that the proposed Solid Waste Facility will be constructed or modified and operated in compliance with the standards established herein.

The Board shall appoint a Siting Committee to assist in the review of the General Plans and Specifications. The Board, upon recommendation of the Siting Committee, may request the assistance of the host county Health Department and/or host county Sanitary Engineer to perform or to supervise the review of the General Plans and Specifications for the proposed construction or modification as the same relates to these siting rules. The Board may employ such engineers, consultants and advisors as it deems necessary to assist in the review of the General Plans and Specifications as they relate to these siting rules. The Siting Committee may include, but is not limited to, the following representatives:

- a member of the Board;
- a representative of the host county Board of Health;
- the host county Sanitary Engineer;
- a representative of the host County's Regional Planning Commission;
- a representative of the STW District's Policy Committee;
- if the location proposed for the facility is within a township, at least one township trustee from the proposed host township;
- if the location proposed for the facility is within a municipality, at least one elected officer of that municipality; and
- a representative citizen of the host county as recommended by the Commissioners of the host County.

Within 60 days of the Applicant's submission of the General Plans and Specifications the Board shall determine whether the General Plans and Specifications submitted by the Applicant contain sufficient information for the Board to complete its review of the proposal. In the event it is determined that more information is necessary to complete its review of the proposal, the Board shall notify the Applicant of such request in writing.

The Board will proceed to determine whether the Applicant has demonstrated that the proposed Solid Waste Facility will be constructed or modified and operated in compliance with the standards established herein. The Sanitary Engineer and/or the Siting Committee, if requested by the Board, shall prepare a report summarizing the review. This report shall include a recommendation to the Board as to whether the General Plans and Specifications comply with the Plan and satisfy all other criteria stated herein. The final determination of whether the General Plans and Specifications for the proposed construction or modification demonstrates compliance with the standards herein is the sole discretion of the Board.

Procedure:

The above process shall be used by the STW-SWD Board to review Rule 9.03 III B.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

VI. DEVELOPMENT AGREEMENT

In the event the Board determines that the proposed construction or modification and operation of a Solid Waste Facility, as set forth in the Applicant's General Plans and Specifications with respect thereto, comply with the Plan and the other requirements and criteria set forth in these rules, the Applicant and the Board shall enter into a development agreement memorializing the terms and conditions that are the basis of the above mentioned determination by the Board. The Applicant and any successor in interest shall have an ongoing obligation to comply with the development agreement, the Plan, and the General Plans and Specifications as submitted and approved by the Board.

Procedure:

The Development agreement shall be constructed by the legal council of the STW-SWD, and signed by the STW-SWD Board, and the Solid Waste Facility Ownership.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

VII. WAIVER

The Board may waive, by majority vote of the full Board, the requirement for submission and Board approval of General Plans and Specifications or otherwise grant waivers to these rules if the Board concludes such waiver is in the best interest of the STW District and will assist the Board in the successful implementation of the Plan and further STW District goals with respect to Solid Waste management and Solid Waste reduction activities.

Procedure:

The Solid Waste Facility is responsible for submitting the appropriate waiver request form, along with applicable fees to the STW-SWD, along with all other information requested by the STW-SWD Board in order to grant a waiver for any part of the rules. The STW-SWD Board shall then in a timely manner, determine if the waiver request is justified, and in accordance with the STW-SWD Plan.

Rule 9.03 SOLID WASTE FACILITY SITING RULES

VIII. SEVERABILITY

If any provision hereof is ruled invalid by any court of competent jurisdiction, such decision shall not affect the validity of any other provision hereof. Additionally, in the event any provision hereof is determined to be a design standard within the meaning of ORC §343.01(G)(2), such provision shall not be considered in the Board's review of any proposed Solid Waste Facility under these regulations.

Procedure:

Solid waste facilities which fail to meet any criteria of Rule 9.03 by the STW-SWD may be subject to a warning, fine, or any other remedy at law or equity available to the STW-SWD.

Rule 9.04 Prohibition or Limitation of Out-of-District Wastes

No Solid Waste Facility within the STW District shall accept waste originating in another solid waste district or authority within the State, unless such originating district or authority meets or exceeds the STW District's Recycling Standards. Each originating district or authority's recycling standard is either:

- (1) the percentage of waste recycled in both
 1. the residential/commercial and
 2. industrial waste streams;
- (2) the access percentage; as is set forth in each respective district or authority's Ohio EPA approved report.

For the purpose of this Rule, the STW District Recycling Standards shall be the percentage of waste recycled within the STW District in each category (residential/commercial and industrial), or the access percentage, as established by an average of the STW District's Ohio EPA approved reports for the previous three (3) consecutive calendar years, beginning with the baseline year of 2005.

The STW District Recycling Standards will be adjusted accordingly on an annual basis. This Rule 9.04 will be effective January 1, 2008. Nothing in this Rule shall impair any third party's contract rights in existence at the time of the adoption of Rule 9.04.

Rule 9.04 will cease to have effect on December 31, 2010, unless the Board affirmatively acts to renew the Rule, provided that the Board has the written authority from the Ohio EPA to amend, rescind, or adopt rules governing the STW District as of December 1, 2010. If the District is not so authorized as of December 1, 2010, Rule 9.04 shall remain in effect.

Procedure:

9.04 Prohibition or limitation of Out-of-District Wastes

- 1) *All Solid Waste Districts, within the State of Ohio and outside the STW-SWD which dispose of solid waste within the STW-SWD, must apply for and pay all applicable fees, to secure a hearing to determine approval for disposing of solid waste at a Solid Waste Facility within the jurisdiction of the STW-SWD.*
 - a) *The STW-SWD requires all Solid Waste Districts to prove that such originating District or authority meets or exceeds the STW-SWD's recycling standards prior to approval for solid waste disposal within the STW-SWD. Comparative recycling standards are to be based upon either:*
 1. *The percentage of waste recycled in both*
 - a. *The residential/commercial and*
 - b. *Industrial waste streams.*
 2. *The access percentage, as is set forth in each respective District or authority's Ohio EPA approve report.*

- b) *For the purpose of this Rule, the STW-SWD Recycling Standards shall be the percentage of waste recycled within the STW-SWD in each category (residential/commercial and industrial), or the access percentage as established by an average of the STW-SWD's Ohio EPA approved reports for the previous three (3) consecutive calendar years, beginning with the baseline year of 2005.*
- c) *The STW-SWD Recycling Standards will be adjusted accordingly on an annual basis. This Rule, 9.04, will be effective January 1, 2008. Nothing in this Rule shall impair any third party's contract rights in existence at the time of the adoption of Rule 9.04.*
 - 1. *At the expiration of any contract in place prior to the adoption of Rule 9.04 and prior to renewing any contract between the Solid Waste Facility or Solid Waste Collection Vehicles and originating authority/waste District, the originating authority or waste District must meet all applicable requirements of Rule 9.04. Including being placed on the STW-SWD approved list.*
 - 2. *If the originating authority or waste District does not meet the recycling requirement said originating authority or District may apply for a waiver from the STW-SWD.*
 - a. *The STW-SWD Board of Directors will determine if a waiver is warranted on a case by case basis.*
- d) *Rule 9.04 will cease to have effect on December 31, 2010, unless the Board affirmatively acts to renew the Rule, provided that the Board has written authority from the Ohio EPA to amend, rescind or adopt rules governing the STW-SWD as of December 1, 2010. If the STW-SWD is not so authorized as of December 1, 2010, Rule 9.04 shall remain in effect.*
- e) *Solid Waste Facilities which fail to meet any criteria of Rule 9.03 by the STW-SWD may be subject to a warning, fine, or any other remedy at law or equity available to the STW-SWD.*

Revised: November 24, 2008