

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
WIN WASTE INNOVATIONS OF)
SENECA COUNTY LLC)
FORMERLY KNOWN AS)
SUNNY FARMS LANDFILL LLC)
12500 W COUNTY RD 18)
FOSTORIA, OH 44830)

Case No. 2023-0617

Relator,

v.

SENECA COUNTY BOARD OF)
HEALTH,)
71 S. Washington Street)
Tiffin, OH 44883)

ORIGINAL ACTION
IN MANDAMUS

Respondent.

MOTION FOR JUDICIAL NOTICE
PART 1 OF 2

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Innovations of Seneca County LLC*

Relator WIN Waste Innovations of Seneca County LLC (formerly known as Sunny Farms Landfill LLC and referred herein as “WIN Waste” or “WWSC”),¹ hereby moves, pursuant to Ohio R. Evid. 201, for the Court to take judicial notice of the following document attached as Exhibit 1 to this Motion:

1. WWSC’s Notice of Appeal filed in Environmental Review Appeals Commission Case Number 24-7193 (“Notice”) (Ex. 1), including specifically WWSC’s 2024 License (attached as Exhibit A to the Notice), and the Board’s December 14, 2023 Meeting Agenda (attached as Exhibit P to the Notice).

MEMORANDUM IN SUPPORT

It is settled under this Court’s precedents that, “in mandamus actions, a court is not limited to considering facts and circumstances at the time a proceeding is instituted but should consider the facts and conditions at the time it determines whether to issue a peremptory writ.” *State ex rel. Dawson v. Bloom-Carroll Local School Dist.*, 131 Ohio St.3d 10, 959 N.E.2d 524, 2011-Ohio-6009 ¶18 (2011) (quoting *State ex rel. Portage Lakes Edn. Ass’n, OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 769 N.E.2d 853, 2002-Ohio-2389 ¶54 (2009)). To that end, WWSC offers an adjudicative fact for this Court’s consideration as it considers WWSC’s petition for either a peremptory writ of mandamus or an alternative writ of mandamus.

By way of brief background, WWSC filed its operative complaint in this matter (the “Verified Amended Complaint” or “VAC”) in June 2023 after the Board violated the Open Meetings Act, R.C. 121.22, in issuing WWSC its annual operating license for operating a landfill.

¹ WIN Waste Innovations of Seneca County LLC has previously referred to itself as “Sunny Farms” in this mandamus action. Consistent with the company’s formal name change last year, the company will be referring to itself as “WIN Waste or WWSC” going forward.

(See generally VAC.) As explained in the VAC, the Board belatedly issued WWSC's 2023 license with 25 conditions (the "2023 License") after unlawfully failing to deliberate on those conditions in a public session. (VAC, ¶6.) Any deliberations on the conditions in the 2023 License occurred solely in a closed executive session, shrouding the Board's decision-making process in secrecy. (See *id.*) Upon exiting from a non-public, executive session, the Board voted to issue WWSC's 2023 License with conditions without public discussion or deliberation of the license or the terms and conditions of the license. (*Id.* ¶39.)

The Board continues to follow the same unlawful practices, and a dispute continues to exist between the Board and WWSC over the Board's failure to comply with the Open Meetings Act in issuing WWSC its annual operating license. As it did with the 2023 License, the Board issued the 2024 License with numerous conditions (24) spanning a broad scope of environmental matters concerning the landfill, including air, water, groundwater, solid waste, and transportation matters. (See 2024 License, Ex. A, attached to Ex. 1; see also VAC ¶41.) WWSC is appealing the conditions attached to its 2024 License in a separate administrative proceeding with the Environmental Review Appeal Commission ("ERAC"). (Ex. 1.)² As relevant here, the Notice sets forth WWSC's position that "[t]he Board did not allow for public deliberation of the license

² ERAC elected to hold WWSC's appeal from the issuance of the 2023 license in abeyance pending a decision in these proceedings. (See Ex. 1 at 3.) Consistent with that approach, WWSC has requested that ERAC stay the appeal from the 2024 license issuance pending resolution of the instant mandamus action by the Ohio Supreme Court (*see* Ex. 1 at 18). As explained in WWSC's Memorandum in Support of Verified Amended Complaint ("Memo"), a writ of mandamus by this court is necessary, notwithstanding WWSC's appeals to ERAC. (Memo at 13.) Appeals to ERAC can only be taken from "final decision[s]" of the Board. *Trans Rail Am., Inc. v. Enyeart*, 123 Ohio St.3d 1, 2009-Ohio-3624, 913 N.E.2d 948, ¶1; see also R.C. 3745.04. And the Open Meetings Act provides that any formal action "is invalid" if it "results from deliberations in a meeting not open to the public." R.C. § 121.22(H). Furthermore, ERAC's jurisdictional statute does not indicate that ERAC has authority to compel compliance with the Open Meetings Act. See R.C. 3745.04.

application or the conditions that the Board intended to include with the 2024 License.” (Ex. 1 at 6.) It is beyond dispute that, yet again, the conditions to the license were not even identified during a public session. (Ex. 1 at 7.) Instead, and as the Board’s December 14, 2023 Meeting Agenda shows, the Board, yet again, held a non-public, executive session where any deliberations occurred before formally agreeing to issue the 2024 license. (*See* Ex. P, attached to Ex.1)

The Court may take judicial notice of facts that are “not subject to reasonable dispute.” Evid. R. 201(B); *accord State ex rel. Ohio Republican Party v. FitzGerald*, 2015-Ohio-5056, ¶ 18, 145 Ohio St. 3d 92, 95, 47 N.E.3d 124, 128. Those facts include “public records accessible through the Internet,” including publicly available court “filings.” *State ex rel. Harris v. Bruns*, 2023-Ohio-2344, ¶10. The Court may also take judicial notice of facts that are “undisputed.” *See, e.g., City of Euclid v. Mabel*, 19 Ohio App. 3d 235, 240, 484 N.E.2d 249, 255 (8th Dist. 1984).

These documents meet these standards. The Notice and its attachments are “public records accessible through the Internet” because they have been filed in the ERAC appeal and are, thus, accessible through the online docket for ERAC Case No. 24-7193 on ERAC’s website. With respect to the 2024 License and the Agenda, the Board is the one who produced it to WWSC, so its existence is “not subject to reasonable dispute.” Evid. R. 201(B); *FitzGerald*, 2015-5056, ¶18. These documents establish that a dispute between WWSC and the Board continues to exist regarding the Board’s failure to comply with its duties under the Open Meetings Act, R.C. 121.22, in issuing WWSC its annual license to operate the landfill. The Board continues to flout those obligations, necessitating a peremptory writ of mandamus from this Court ordering the Board to issue WWSC its annual license following public deliberations on the license in an open meeting, or an alternative writ. Accordingly, WWSC respectfully requests the Court to take judicial notice of Exhibit 1 and Exhibits A and P attached to Exhibit 1.

Respectfully submitted,

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***Attorneys for WIN Waste Innovations of
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for Judicial Notice was served by email on the following this 19th day of January 2024.

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/s/ Dale E. Papajcik _____
Dale E. Papajcik

EXHIBIT 1

W. County Road 18, Fostoria, Ohio (the “Landfill”). The License is attached hereto as **Exhibit A** and was issued on December 15, 2023. WWSC received notice of the 2024 License on December 18, 2023. Thus, this appeal is timely filed.

**MATTERS REGARDING WWSC’S ANNUAL OPERATING LICENSE PENDING
BEFORE ERAC AND THE OHIO SUPREME COURT**

1. On May 25, 2023, the Health District issued WWSC’s 2023 Annual Operating License with 25 conditions (“2023 License”). On June 16, 2023, WWSC timely filed a Notice of Appeal of the 2023 License with this Commission in a case captioned *WIN Waste Innovations of Seneca County LLC v. Julie Richards, Health Commissioner, Seneca County General Health District, [f.k.a. Laura Wallrabenstein, Interim Health Commissioner]*, Case No. ERAC 23-7181. The Notice of Appeal is attached hereto as **Exhibit B** and incorporated herein by reference.

2. The issuance of the 2023 License to WWSC is pending before the Ohio Supreme Court in *State of Ohio ex rel. WIN Waste Innovations of Seneca County LLC, formerly known as Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.). See Verified Complaint for Mandamus Relief (May 10, 2023) attached hereto as **Exhibit C**. In that case, Appellant WIN Waste asserts that the 2023 License was issued in violation of the Ohio Open Meetings Act and therefore is invalid pursuant to R.C. § 121.22. On June 7, 2023, Appellant filed a Verified Amended Complaint for mandamus relief to compel SCGHD to issue the License in compliance with Ohio’s Open Meetings Act. Appellant’s Verified Amended Complaint is attached hereto as **Exhibit D**. Because the Board’s issuance of the 2023 License in contravention of the Ohio Open Meetings Act rendered the 2023 License invalid, WWSC continues to operate its Landfill in full compliance with its 2022 license, which it is authorized to do under the law.

3. As a result of the foregoing case pending before the Ohio Supreme Court, WWSC filed a Motion for Stay of the effectiveness of the 2023 License on the same day it filed its Notice

of Appeal. See **Exhibit E** attached hereto. In a July 12, 2023 Memorialization of Preliminary Prehearing Conference and Ruling, this Commission denied the Motion for Stay but held that: “In the interest of judicial economy, this matter shall be held in ABEYANCE until a decision is rendered in the matter of *State of Ohio ex rel. WIN Waste Innovations of Seneca County LLC, formerly known as Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (June 7, 2023).” See **Exhibit F** attached hereto. The Ohio Supreme Court has not yet rendered a decision and, therefore, the 2023 License appeal before this Commission remains in abeyance.

4. On May 24, 2023, WWSC filed a second Verified Complaint for Mandamus Relief with the Ohio Supreme Court in response to the Board’s violations of Ohio’s Public Records Act, R.C. § 149.43(B). See *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0676 (Ohio S. Ct.). See **Exhibit G** attached hereto. Members of the Board stated in public meetings that they used their personal email addresses for all communications, because the Board had not yet created Board email addresses. On September 23, 2022, Ben Nutter, WIN Waste Innovations’ Community Engagement Specialist, submitted WWSC’s first public records request, which included a request for copies of the aforementioned emails. See **Exhibit H** attached hereto. After six months and a number of follow up requests to the Board for these documents, WWSC had no alternative than to file its second Verified Complaint with the Ohio Supreme Court, seeking a peremptory writ of mandamus ordering the Board to: (1) comply with the Public Records Act; (2) provide the responsive requested records, including emails and text messages to and from members of SCGHD or the Board; (3) certify that each member of the Board performed the required searches on their personal accounts and devices; (4) recover any emails, texts, or other records that may have been deleted; and (5) provide an explanation for denying

WWSC's request, in whole or in part, and the legal authority for doing so. This case remains pending before the Ohio Supreme Court.

BACKGROUND FACTS

5. WWSC operates a municipal solid waste landfill in Fostoria, Seneca County, Ohio. The Landfill has been in operation for over 50 years.

6. Each year, WWSC is required to renew its operating license with the Board. On September 18, 2023, WWSC timely submitted its application to the Board to renew the annual operating license for the Landfill. *See **Exhibit I*** attached hereto. Pursuant to OAC 3745-501-20(C)(4)(a), the Board is required to issue or deny the license within 90 days (*i.e.*, by December 18, 2023).

7. Following submittal of the annual operating license application, the Board did not communicate *any* alleged deficiency in WWSC's application or *any* alleged violations of applicable environmental laws and regulations by WWSC.

8. Importantly, in 2023, WWSC operated the Landfill in substantial compliance with all applicable environmental laws, regulations, and permits. In addition, WWSC has been in full compliance with the Partial Consent Order and Final Judgment Entry ("Consent Order") issued by the Seneca County Common Pleas Court on July 26, 2019 in Case No. 19-CV-0224. *See **Exhibit J*** attached hereto.

9. The Health District and Ohio EPA inspected the Landfill 24 times in 2023. The Landfill was subject to one Notice of Violation ("NOV") issued by the Health District on February 28, 2023 for an alleged violation related to the placement of construction and demolition debris materials over two feet in length capable of compromising the liner in cell 11. On March 31, 2023, the Health District recognized that the Landfill had resolved this alleged violation. *See **Exhibit***

K. Importantly, the inspections conducted by Ohio EPA found no violations of Ohio’s solid waste laws and regulations at R.C. Chapter 3734 and OAC Chapter 3745-27. See **Exhibits L and M.**

10. On November 21, 2023, Squire Patton Boggs (US) LLP, on behalf of WWSC, submitted a letter to Ohio EPA requesting a statement that the Landfill is in substantial compliance with applicable laws, regulations, permits, and the Consent Order for the year 2023. See **Exhibit N.** Ohio EPA has routinely provided an annual statement in this regard over the years (e.g., 2019, 2020, 2021, and 2022). *Id.* at Attachment A. WWSC reiterated that of the 23 solid waste management inspections conducted as of the date of the letter, one inspection noted an allegation of a single point of non-compliance, which was immediately addressed. It also noted that a single “Letter of Concern” issued by the Health District contained no violations and the issues raised were resolved entirely. *Id.* at p. 2; *id.* at Attachment B. WWSC also provided Ohio EPA with significant data showing its substantial compliance with applicable laws, regulations, permits, and the Consent Order. *Id.* at Attachment C (November 15, 2023 letter from Ohio EPA confirming that after performing stack testing on P902, which uses newly installed H₂S and sulfur emission control technology, the Landfill is in full compliance with its Title V permit and condition C.3.f)(3)(a. and with PTI No. P0128797 and condition C.2.f)(3)(a.); *id.* at Attachment D (Monthly Consent Order Compliance Reports required by the Consent Order and 2023 Landfill License Condition 3.b. indicate 100% compliance with the terms of the Consent Order and that the average flare emissions rate for SO₂ was lower than the allowable emissions rate); *id.* at Attachment E (September 2023 GCCS Report showing the average flare emissions rate for SO₂ was lower than allowable emissions rate). Further, monthly Odor Monitoring Data submitted to Ohio EPA demonstrates control over Landfill odors; monthly Discharge Monitoring Reports submitted to Ohio EPA pursuant to the Landfill’s NPDES permit illustrate that it did not exceed its discharge

limits under the permit and received no allegations of noncompliance from Ohio EPA; and Title V Quarterly Deviation Reports submitted to Ohio EPA in compliance with the Landfill's Title V permit illustrate full compliance with the Title V permit and the Consent Order. *Id.* at p. 2. In sum, WWSC is in substantial compliance with all of its regulatory obligations.

11. By letter dated December 11, 2023, Ohio EPA responded to WWSC's request and agreed that the Landfill is in substantial compliance with all applicable laws, regulations, permits, and the Consent Decree. *See **Exhibit O***. Ohio EPA concluded that: "Based on a review of the information from Ohio EPA's Division of Air Pollution Control, Division of Surface Water, and Division of Materials and Waste Management, ***the WIN Waste Innovations of Seneca County facility is in substantial compliance with Ohio Revised Code Chapters 3704, 3734, and 6111 and, therefore, meets the criterion of OAC Rule 3745-501-15(A)(10) as of the date of this letter.***" *Id.* (emphasis added).

12. On December 14, 2023 at approximately 6:00 PM, the Seneca County Board of Health held a public meeting. *See* Dec. 14, 2023 Board Meeting Agenda, attached hereto as **Exhibit P**. At that meeting, at approximately 6:01 PM, the Board voted to go into executive session to discuss "pending and imminent court action." The executive session ended at approximately 7:35 PM. The Board did not allow for public deliberation of the license application or the conditions that the Board intended to include with the 2024 License. ***In fact, the Board did not share any of the License conditions with WWSC or the public during the meeting on December 14.*** Seneca County Board of Health President Clay Wolph moved to approve the 2024 License with the conditions prepared. The Board unanimously voted to approve the 2024 License with conditions. During the public comment session of the meeting, Brian Ezyk, Vice President, Landfills for WIN Waste, noted Ohio EPA's finding of substantial compliance and provided the

Board with written copies of the November 21, 2023 letter from Squire Patton Boggs (US) LLP to Ohio EPA requesting a finding of substantial compliance and Ohio EPA's December 11, 2023 response finding WWSC in substantial compliance. See **Exhibits N and O** attached hereto.

13. On December 15, 2023, Julie Richards, Health Commissioner for the Seneca County General Health District, issued the 2024 License with 24 conditions, all of which are unlawful, unreasonable, arbitrary and capricious, and/or outside of the scope of the Board's authority. WWSC saw the License and conditions for the first time *three days after it was issued* on December 18, 2023 when the Board hand-delivered the License to Brian Ezyk.

14. Prior to issuance of the 2023 and 2024 Licenses, the Board had not included additional terms and conditions in a license to WWSC *in years* and made no allegation that any conditions are necessary to ensure compliance with Ohio's solid waste laws and regulations. In fact, after having a 2021 and 2022 license *with no conditions*, and despite being in substantial compliance as determined by Ohio EPA in 2022 and 2023, the Board—for the second year in a row—issued a license to WWSC with multiple conditions which are, as detailed below, erroneous, arbitrary, unreasonable, and unlawful.

ASSIGNMENTS OF ERROR, OBJECTIONS, AND ISSUES TO BE RESOLVED

WWSC assigns the following specific errors, objections, and issues for adjudication on the basis that the corresponding provisions in the 2024 License are erroneous, arbitrary, unreasonable, and unlawful:

- 1. The 2024 License conditions are beyond the scope of the Board's authority and are not necessary to ensure compliance with Ohio's solid waste laws and regulations.**

WWSC is in full, substantial compliance with applicable environmental laws and regulations and the permits issued by Ohio EPA. In addition, WWSC is in full compliance with the Consent Order, which requires it to comply with obligations that are far more stringent than

currently applicable solid waste management laws and regulations. These stringent requirements were the result of unique circumstances at WWSC, which no longer exist. WWSC completed construction of a \$54M gas treatment system designed to reduce emissions by 98%. Ohio EPA inspected the Landfill's new treatment system on June 6, 2023 and "verified that the equipment is treating all landfill gas and removing more than the required amount of hydrogen sulfide prior to flaring the gas in a new enclosed flare." *See* Tom Henry, *\$54 million landfill system seeks to eliminate odors, reduce emissions at WWSC*, TOLEDO BLADE, June 8, 2023, attached hereto as **Exhibit Q**.

The Board's authority to impose license conditions is limited. The Board may include *only* such terms and conditions in a license "as are appropriate to ensure compliance" with R.C. Chapter 3734 and the rules adopted under it. *See* R.C. § 3734.05(A)(1). In addition, "[t]erms and conditions included in a license or revision to a license by a board of health ***shall be consistent with, and pertain only to the subjects addressed in,*** the rules adopted under division (A) of section 3734.02 and division (D) of section 3734.12 of the Revised Code." *Id.* (emphasis added). The conditions in the 2024 License are unnecessary and not appropriate to ensure compliance with the solid waste laws and regulations because WWSC is already in compliance with these requirements. Further, ***the conditions are not consistent with, and do not pertain only to the subjects addressed in, the applicable rules*** adopted under R.C. § 3734.02(A) and R.C. § 3734.12(D). The Board acted erroneously, arbitrarily, unreasonably, and unlawfully in unilaterally imposing conditions in the 2024 License. WWSC requests that this Commission order the Board to remove all 24 conditions in the 2024 License.

2. Condition 1 regarding gas collection and control is unreasonable, unlawful, arbitrary and capricious, and not consistent with standard industry practice.

Condition 1 requires WWSC to “maintain the Facility’s gas collection and control system to ensure its proper operation to prevent subsurface migration and odors.” Further, “[w]ithin 60 days after issuance of this License, Licensee shall submit a report to SCGHD providing SCGHD with all data that was collected for each gas collection well pursuant to Condition No. 1 of Licensee’s 2023 License. Licensee shall correct any and all deficiencies in Licensee’s implementation of Condition No. 1 of Licensee’s 2023 license or Licensee’s 2024 license within 60 days after receiving SCGHD’s notice of these deficiencies.” *Id.* This Condition is unreasonable, unlawful, arbitrary and capricious, and not consistent with industry practice.

Indeed, WWSC is currently appealing Condition 1 of the 2023 License. Condition 1.a. of the 2023 License requires WWSC to “determine the actual achieved radius of influence for each gas collection well” by October 31, 2023 based on operating parameters including, but not limited to, quarterly average applied vacuum level, percentage of engineered perforation length available for gas exchange, and maximum elevation difference between the top of open well perforations and the Landfill’s surface elevation at the location of the well. Condition 1.b. of the 2023 License requires that if any gas collection well’s actual achieved radius of influence is less than 75% of that well’s engineered minimum radius of influence, WWSC must investigate the cause within 30 days of the deficiency, implement corrective actions within 90 days of identifying the deficiency, and maintain records of all wells with deficiencies and submit copies of these records to the Board by November 30, 2023.

The 2024 License Condition 1 expands upon the requirements of Condition 1 of the 2023 License, both of which are unlawful and unreasonable, by further requiring corrective action of deficiencies within 60 days as compared to 90 days in the 2023 License. WWSC is already

required by law and its relevant air permits to “maintain the Facility’s gas collection and control system to ensure its proper operation to prevent subsurface gas migration and odors” as required. Regulation of pollution control equipment such as WWSC’s landfill gas collection system is outside the scope of the Board’s authority. The Health District does not have jurisdiction to regulate air pollution control matters. *See* R.C. § 3734.05(A)(1). Furthermore, Conditions 1.a. and 1.b. of the 2023 License and Condition 1 of the 2024 License impose requirements that are not typical industry practice and are not required for similarly situated facilities. Because Condition 1 in the 2024 License relies on the text of the 2023 License Condition 1 and expands upon it, WWSC requests this Commission order the Board to remove Condition 1 from the 2024 License because it is unreasonable, unlawful, arbitrary and capricious, and beyond the scope of the Health District’s authority.

3. Condition 2 regarding flares at the Landfill is unnecessary and redundant of current standard practice.

Condition 2 requires WWSC to “immediately notify SCGHD in the event that any flare in the Facility’s gas collection and control system becomes inoperable or is down for repairs,” “immediately notify SCGHD upon discovering that the temporary or permanent shutdown, repair, malfunction, or cessation of operation of any other component of the Facility’s gas collection and control system has reduced gas collection, increased odors, or increased sulfur dioxide emissions,” and “provide SCGHD with a copy of any subsequent written statement provided to Ohio EPA pursuant to Ohio Adm. Code 3745-15-06(B) about any inoperable flare or about any other issue with the Facility’s gas collection control system.” This Condition is unnecessary as WWSC already provides this notification and documentation to the Board. Therefore, WWSC requests that this Commission order the Board to remove Condition 2 from the 2024 License.

4. Conditions 3, 7, 10, and 21 are unnecessary, redundant, and already required by applicable regulations.

Condition 3 requires that WWSC “not operate the Facility in a manner that emits odors that endanger the health, safety, or welfare of the public, or causes unreasonable injury or damage to property.” Pursuant to OAC 3745-15-07, Ohio EPA prohibits air pollution nuisances, prohibiting operations that “emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property.” Similarly, Condition 7 requires WWSC to “contain all litter at the Facility so it is not blown into or deposited on property not owned by the Licensee,” which is already regulated by Ohio EPA at OAC 3745-27-19(E)(9) (“The owner or operator shall employ all reasonable measures to collect, properly contain, and dispose of scattered litter ...”). Condition 10 requires WWSC to “repair ponding, erosion, and leachate outbreaks where waste is being deposited or has been deposited” and “undertake the actions necessary to correct the conditions causing ponding, erosion, or leach outbreaks as soon as practical, but no later than three hours after discovery,” which is addressed by Ohio EPA at OAC 3745-27-19(J)(3) (“If ponding or erosion occurs on areas of the sanitary landfill facility where waste is being, or has been, deposited, the owner or operator shall undertake actions as necessary to correct the conditions causing the ponding or erosion.”). In addition, the requirement to undertake corrective action *no later than three hours after discovery* is unreasonable given the fact-specific nature of any necessary corrective action. Condition 21 requires WWSC to “prevent dust from the Facility, including its rail car unloading area, roads, and soil borrow pits, from entering property not owned by Licensee in such a manner or in such amounts as to endanger the health, safety, or welfare of the public or cause unreasonable injury or damage to property,” which is addressed by applicable regulations. *See, e.g.*, OAC 3745-27-19(B)(3) (“The owner or operator shall operate the facility in such a manner that noise, dust, and odors are strictly controlled so as

not to cause a nuisance or a health hazard.”); OAC 3745-27-19(E)(7)(f) (requiring the owner or operator to ensure “[d]usty materials are handled, compacted, and covered in such a manner as to minimize the amount of dust that is generated by those materials.”). WWSC has been and remains in compliance with all of these Ohio EPA regulatory provisions. Because Conditions 3, 7, 10, and 21 are redundant of or unreasonably and unlawfully exceed Sunny Farm’s current regulatory obligations, WWSC requests that the Commission issue an order removing the Conditions from the 2024 License.

5. Condition 4 is unnecessary, redundant, and already required by the Consent Order.

Condition 4 requires WWSC to provide the Health District with copies of submittals required under Paragraphs 16.A.i-iii, 16.E, 16.F, 16.I.iv, and 16.M of the Consent Order. However, pursuant to the Consent Order, WWSC is required to provide various submittals to both Ohio EPA and the Health District and WWSC is in full compliance with this requirement. Therefore, because Condition 4 is unnecessary and redundant of WWSC’s current obligations, WWSC requests that this Commission issue an order removing Condition 4 from the 2024 License.

6. Condition 5 is unnecessary, unreasonable, and outside of the scope of the Board’s authority.

Condition 5 requires all future reporting submittals to Ohio EPA under WWSC’s air pollution control permits to be submitted to the Health District within seven days after submission to Ohio EPA. The Health District does not have jurisdiction to regulate WWSC as it pertains to air pollution control matters. *See* R.C. § 3734.05(A)(1). Requiring WWSC to submit all air reports to the Health District is unnecessary, unreasonable and beyond the scope of the Board’s authority and, as such, WWSC requests that this Commission issue an order removing Condition 5 from the 2024 License.

7. Condition 6 is unreasonable, arbitrary and capricious, erroneous, unlawful, and outside of the scope of the Board’s authority.

Condition 6 requires WWSC to “provide SCGHD with at least two days advance notice that identifies the dates on which Licensee will place the first layer of waste on any composite liner pursuant to Ohio Adm. Code 3745-27-19(D)(1) or, if promulgated as a final rule, Ohio Adm. Code 3745-535-610(C)(1).” OAC 3745-27-19(D)(1) contains no requirement for notification prior to waste placement. Similarly, Proposed Rule OAC 3745-535-610(C)(1) does not include a requirement to provide notification prior to waste placement. In addition, inclusion of license condition based on a Proposed Rule, such as OAC 3745-535-610(C)(1), is unreasonable and wholly speculative given that the rulemaking is subject to public comment and revision prior to publication of any Final Rule. Furthermore, the Board lacks the authority to include such a condition in the 2024 License. The Board may include *only* such terms and conditions in a license “as are appropriate to ensure compliance” with R.C. Chapter 3734 and the rules adopted under it. *See* R.C. § 3734.05(A)(1). Here, WWSC is in substantial compliance with Ohio’s solid waste laws and regulations. Therefore, Condition 6 is unreasonable, arbitrary and capricious, erroneous, and unlawful, and WWSC requests that this Commission issue an order requiring its removal from the 2024 License.

8. Condition 8 is unreasonable, unlawful, and outside of the Board’s authority.

Condition 8 prohibits WWSC from applying “water to waste in rail cars in quantities that result in the leakage of water or other liquids from the rail cars” and requires that “[a]ny water or other liquids leaking from the rail cars inside the rail car unloading building shall be contained on a concrete slab sloped to direct the liquids into a leachate collection sump” and the “liquids shall be lawfully disposed of at a wastewater treatment facility.” Leachate is already collected and properly managed at the Landfill facility. The rail unloading building currently has an Ohio EPA-

approved collection sump that collects and conveys collected liquid to the Landfill's leachate collection system for proper disposal. Furthermore, conditions related to rail and railcars is outside of the scope of the authority of an approved health district. Finally, WWSC's air permit *requires* the application of water for dust control as a condition of compliance. Condition 8 conflicts with WWSC's air permit and thereby interferes with WWSC's ability to comply with its air permit. Therefore, WWSC requests that this Commission issue an order removing Condition 8 from the 2024 License.

9. Conditions 9 and 11 are unreasonable, unlawful, and outside of the scope of the Board's authority.

Condition 9 requires WWSC to "require all rail cars of waste entering the Facility to employ measures that prevent litter from being blown off or escaping from the rail cars" and prohibits WWSC from allowing any rail car to enter the Facility "if the rail car does not employ these measures." The Health District expanded Condition 11 from the 2023 License and requires "all rail cars of waste entering the Facility to be either watertight or covered with an impermeable and watertight cover so that water and/or other liquids do not leak from the rail cars." The Condition further requires WWSC to "daily inspect the loaded and unloaded rail cars at the Facility for leaks or spills of water or other liquids from inside the rail cars and for leaks and spills of oil and hydraulic fluids from the rail cars." Further, "[i]mmediately after discovering any such leaks or spills ... Licensee shall stop the leaks and spills or capture them in containers, mats, or other devices to prevent them from entering soil or gravel and shall remove any leaked or spilled materials that have already fallen onto soil or gravel." WWSC is also required to "keep a daily log of inspections conducted pursuant to this condition, including the date and time of each inspection, a description of any leaks and spills, and a description of any actions taken to stop or remediate the leaks or spills." This log must be available for SCGHD's review. These Conditions

are overbroad, unlawful, and unreasonable. Furthermore, these Conditions exceed the Board's authority because rail and rail cars are not regulated by the Board. Because Conditions 9 and 11 are unreasonable, unlawful, and outside of the scope of the Board's authority, WWSC requests that this Commission issue an order removing Conditions 9 and 11 from the 2024 License.

10. Part of Condition 12 is already regulated by Ohio EPA and the remainder is unreasonable and arbitrary and capricious.

Condition 12, in part, requires that the Facility "not discharge pollutants into wetlands or other waters of the state, except as authorized by a National Pollutant Discharge Elimination System ('NPDES') permit issued by the Director of Environmental Protection." This Condition is unnecessary as it is redundant of current regulatory requirements under Ohio's NPDES regulations and exceeds the Board's authority. *See* OAC 3745-33-02. Further, Condition 12 is unreasonable, arbitrary and capricious because it requires notification to the Board *within 30 minutes of the discovery of any discharge*. Because part of Condition 12 is already regulated by Ohio EPA and the remainder of Condition 12 is unreasonable and arbitrary and capricious, WWSC requests its removal from the 2023 License.

11. Conditions 13, 14, 15, 16, 17, 18, 19, and 20 are unlawful, unreasonable, and arbitrary and capricious.

Condition 13 requires that WWSC must provide the Health District with a copy of each future update or revision to the Stormwater Pollution Prevention Plan ("SWPPP") "within five business days after preparing the update or revision." Condition 14 requires WWSC to provide the Health District "with a copy of each inspection report documenting the results of any future inspection pursuant to the NPDES permit or the SWPPP within one business day after preparing the report." Condition 15 requires WWSC to provide the Health District "with a copy of each report documenting the results of any future quarterly visual assessment pursuant to the NPDES permit or the SWPPP within one business day after preparing the report." Condition 16 requires

that WWSC must provide the Health District with “a copy of each future documentation pursuant to Paragraphs D.3 and D.4 of Part IV of the NPDES permit or equivalent provisions of future NPDES permits within one business day after its preparation.” Condition 17 requires WWSC to provide the Health District with “a copy of each Discharge Monitoring Report submitted to Ohio EPA pursuant to the NPDES permit on the same day as the report was submitted to Ohio EPA.” Condition 18 requires WWSC to provide the Health District with any future update or revision to the Spill Prevention, Control, or Countermeasure (“SPCC”) plan for the Facility within five business days after preparing the update or revision. Condition 19 requires that WWSC must provide the Health District “with a copy of each inspection report documenting the results of any future inspection pursuant to any SPCC plan within one business day after preparing the report.” Condition 20 requires that WWSC must provide the Health District “with documentation of all future employee training pursuant to the NPDES permit within five days after conducting the training.”

These Conditions are unlawful, unreasonable, and arbitrary and capricious and the Board provided no basis for their inclusion. WWSC is in substantial compliance with all applicable regulations and permits. In addition, it has complied with and continues to comply with all applicable recordkeeping requirements and those documents are available for on-site review at the Board’s request. Finally, submittals of such records are not required by the underlying NPDES regulations which further illustrates the unreasonable nature of the condition. Therefore, WWSC requests that this Commission remove Conditions 13, 14, 15, 16, 17, 18, 19, and 20 as they are unlawful, unreasonable, and arbitrary and capricious.

12. Condition 22 is unreasonable, unlawful, and outside of the Board's scope of authority.

Condition 22 requires WWSC to provide by April 30, 2024 “a report that identifies and provides written documentation of the number of cubic yards of landfill space that was filled in 2023, the number of cubic yards of cover material incorporated into that landfill space in 2023, and the tonnage of waste received by the Facility in 2023 that was incorporated into that landfill space.” It further requires that the report “provide an Airspace Utilization Factor conversion ratio to reconcile the amount of waste by weight as measured upon entry into the Facility with the amount of space occupied by that waste upon incorporation into the landfill” and provide “documentation for the accuracy of that ratio.” This Condition is unreasonable given WWSC's documented substantial compliance. Furthermore, this Condition is redundant of the information that the Landfill is already required to provide to Ohio EPA in its annual report required by OAC 3745-27-19(M). Because Condition 22 is unreasonable and unlawful, WWSC requests that this Commission issue an order removing it from the 2024 License.

13. Conditions 23 and 24 are unnecessary, redundant, and unreasonable.

Conditions 23 and 24 require WWSC to provide access to its facility to the Health District and submit documents by email to Health District employees. WWSC is already required to provide proper access under the solid waste laws and submit proper documentation to the Health District if required under the solid waste laws. Because Conditions 23 and 24 are unnecessary, redundant, and unreasonable, WWSC requests that this Commission issue an order removing the Conditions from the 2024 License.

14. The License is invalid as it was deliberated on and voted on in a meeting held in violation of Ohio's Open Meetings Act.

The Board is a public body, and Ohio law requires that “[a]ll meetings of [the Board] are . . . to be public meetings open to the public at all times.” *See* R.C. § 121.22(C). Any “formal

action adopted in an open meeting that results from deliberations in a matter does not open to the public is invalid” unless certain exceptions apply. *See* R.C. § 121.22(H). The Board did not allow for public deliberation of the license application or the conditions that the Board intended to include with the 2024 License. The Verified Amended Complaint for mandamus relief attached as **Exhibit D** is incorporated into this assignment of error by reference. The Verified Amended Complaint sets forth the basis for the conclusion that the Board’s action, subject to this notice of appeal, is invalid. If this Commission determines it appropriate to proceed in this appeal prior to final action by the Ohio Supreme Court, Appellant requests the Commission issue an order finding the Board’s action issuing the 2024 License is invalid as it was taken in violation of Ohio's Open Meetings Act.

15. WWSC reserves the right to add additional assignments of error as they become apparent, particularly as the discovery process proceeds in this appeal.

PRAYER FOR RELIEF

WHEREFORE, WWSC respectfully requests that the Commission:

- a. Stay further proceedings on this matter and stay the effective date of the 2024 License conditions pending conclusion of related matters now before the Ohio Supreme Court;
- b. At the appropriate time, conduct a hearing *de novo* pursuant to R.C. § 3745.05 and OAC 3746-7-01(A);
- c. If within the jurisdiction of ERAC, issue an Order finding the 2024 License invalid based on of the Board’s violation of the Open Meetings Act;
- d. Issue an Order vacating all unlawful, unreasonable, arbitrary, or capricious conditions or requirements in the referenced 2024 License; and
- e. Grant such other relief as the Commission may deem appropriate and just.

Respectfully submitted,



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*Attorneys for WIN Waste Innovations of
Seneca County LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of WIN Waste Innovations of Seneca County LLC was served on this 12th day of January, 2024 via first class U.S. Mail upon the following:

Julie Richards
Health Commissioner
Seneca County General Health District
71 S. Washington Street
Tiffin, Ohio 44883

Jack A. Van Kley
Van Kley Law, LLC
132 Northwoods Blvd.
Suite C-1
Columbus, Ohio 43235

William Haak
Haak Law LLC
12595 Brentwood Dr.
Chesterland, Ohio 44026



Kendra S. Sherman
*Attorney for WIN Waste Innovations of
Seneca County LLC*

List of Exhibits

Exhibit A - 2024 Annual Operating License Issued by the Seneca County General Health District to WIN Waste Innovations of Seneca County LLC on May 25, 2023

Exhibit B - *WIN Waste Innovations of Seneca County LLC v. Julie Richards, Health Commissioner, Seneca County General Health District, [f.k.a. Laura Wallrabenstein, Interim Health Commissioner]*, Notice of Appeal, Case No. ERAC 23-7181 (June 16, 2023)

Exhibit C - Verified Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (May 10, 2023)

Exhibit D - Verified Amended Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (June 7, 2023)

Exhibit E - *WIN Waste Innovations of Seneca County LLC v. Julie Richards, Health Commissioner, Seneca County General Health District, [f.k.a. Laura Wallrabenstein, Interim Health Commissioner]*, Motion for Stay, Cause No. ERAC 23-7181 (June 16, 2023)

Exhibit F - *WIN Waste Innovations of Seneca County LLC v. Julie Richards, Health Commissioner, Seneca County General Health District, [f.k.a. Laura Wallrabenstein, Interim Health Commissioner]*, Memorialization of Preliminary Prehearing Conference and Ruling, Cause No. ERAC 23-7181 (June 16, 2023)

Exhibit G - Verified Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0676 (Ohio S. Ct.) (May 24, 2023)

Exhibit H - Letter from Ben Nutter, WIN Waste Innovations' Community Engagement Specialist, to the Board (Sept. 23, 2022)

Exhibit I - WWSC's 2024 Annual Operating License Application (Sept. 18, 2023)

Exhibit J - Partial Consent Order and Final Judgment Entry, Seneca County Court of Common Pleas, Case No. 19-CV-0224 (July 26, 2019)

Exhibit K - March 31, 2023 letter from Austin Nainiger, Seneca County General Health District to Brian Ezyk, WWSC Landfill LLC

Exhibit L - November 2, 2023 letter from Tyler Madeker, Division of Materials and Waste Management, Ohio EPA, to Brian Ezyk, WIN Waste Innovations of Seneca County LLC

Exhibit M - November 29, 2023 letter from Tyler Madeker, Division of Materials and Waste Management, Ohio EPA, to Brian Ezyk, WIN Waste Innovations of Seneca County LLC

Exhibit N - November 21, 2023 letter from Dale E. Papajcik, Squire Patton Boggs (US) LLP, to Todd Anderson, Chief, Ohio EPA Legal Section (with attachments)

Exhibit O - December 11, 2023 letter from Todd Anderson, Chief, Ohio EPA Legal Section, to Dale E. Papajcik, Squire Patton Boggs (US) LLP

Exhibit P - December 14, 2023 Seneca County Board of Health Meeting Agenda

Exhibit Q - Tom Henry, *\$54 million landfill system seeks to eliminate odors, reduce emissions at WWSC*, TOLEDO BLADE (June 8, 2023)

EXHIBIT A

2024 Annual Operating License Issued by the Seneca County General Health District to WIN Waste Innovations of Seneca County LLC on May 25, 2023



Seneca County General Health District
Julie Richards, MA, LSW, LPCC/S, Health Commissioner
92 E. Perry St., Tiffin OH 44883
Phone: (419) 447-3691
Fax: (419) 448-5782
401 Kirk St., Fostoria OH 44830
Phone: (419) 435-4401
www.senecahealthdept.org

December 15, 2023

Brian Ezyk
Senior Vice President
WIN Waste Innovations of Seneca County LLC
12500 County Road 18
Fostoria, OH 44830

Dear Mr. Ezyk,

Enclosed is a copy of the 2024 Solid Waste Facility License for Sunny Farms Landfill. Pursuant to Ohio Administrative Code Section 3745-501-25, the license fee of \$59,900.00 must be submitted to the Seneca County General Health District by January 14, 2024.

You are hereby notified that this action of the Board of Health is final and may be appealed to the Environmental Review Appeals Commission pursuant to Ohio Revised Code Section 3745.04 within 30 days after notice of the action. Notice of the filing of the appeal must be filed with the Board of Health within three days after the appeal is filed with the Commission. Thank you for your continued cooperation in this matter.

If you have questions, please call.

Respectfully,

A handwritten signature in blue ink that reads "Julie Richards". The signature is written in a cursive, flowing style.

Julie Richards, MA, LSW, LPCC/S
Health Commissioner

2024



2024

Solid Waste Facility License Municipal Solid Waste Landfill

License Expires December 31, 2024

Facility: WIN Waste Innovations of Seneca County LLC CID: 37706 12500 W Co Rd 18 Fostoria, OH 44830	Licensee: WIN Waste Innovations of Seneca County LLC 12500 West County Road 18 Fostoria, OH 44830
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This license has been issued in accordance with the requirements of state law, is subject to revocation or suspension for cause, and is not transferable without the consent of the approved Board of Health and the Director of the Ohio Environmental Protection Agency.

Licensing Authority: Seneca County General Health District

Conditions of Licensure:

The Licensee hereunder, its agents, employees, and all others in active concert with said licensee, including the facility owner and operator, shall be subject to and shall comply with the following conditions of this license:

1. All applicable requirements of Ohio Revised Code Chapters 3734, 3767, 6111, and 3704 and rules adopted thereunder.
2. Permits-to-install, plans, operational reports, other authorizing documents, and administrative and judicial orders applicable to this facility and as approved by the Director of the Ohio Environmental Protection Agency.
3. This license is conditional upon payment of the applicable fee to the Board of Health or the Director, as appropriate, within 30 days after issuance.
4. By applying for and accepting this license, the licensee specifically consents in advance and agrees to allow the Director, the Health District, or an authorized representative, to enter upon the licensee's premises at any reasonable time during the construction and/or operation of the facility for the purpose of inspecting, conducting tests, collecting samples, or examining records or reports pertaining to construction, modification, installation, or operation of the facility. The licensee hereby acknowledges and agrees that any and all rights of access granted herein shall not be deemed to be unreasonable or unlawful under Ohio Revised Code Sec. 3734.07. The licensee, its agents, employees, and all others in active concert with said licensee shall maintain and operate the facility to which the license pertains in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard. This license shall not be construed to constitute a defense to any civil or criminal action brought by the State of Ohio or any duly authorized representative thereof to enforce the provisions of Chapters 3734, 3767, 6111, or 3704 of the Ohio Revised Code, or regulations issued thereunder. Issuance of this license does not relieve the licensee of the duty to comply with all applicable federal, state, and local laws, regulations and ordinances.

If checked, Additional Conditions Apply to This License (See Back, or Attachment)

Julie Richards

 Health Commissioner

12-15-2023

 Date Issued

2024 LICENSE CONDITIONS

DEFINITIONS

The following definitions apply to these conditions:

“Consent Order” means the Partial Consent Order and Final Judgment Entry entered into by the State of Ohio and Sunny Farms Landfill LLC in Case No. 19-cv-0224 in the Court of Common Pleas of Seneca County, Ohio.

“Facility” means the landfill located at 12500 West County Road 18, Fostoria, Ohio and all appurtenances owned or operated by Licensee, including the portion of the railroad track located on property owned or operated by Licensee, roads at the landfill, borrow pits, and the rail car unloading building.

“Licensee” means the owner and operator of the Facility.

“NPDES Permit” means the National Pollutant Discharge Elimination System (“NPDES”) permit issued for the Facility by the Director of Environmental Protection and any future amendments, modifications, or renewals of this permit.

“SCGHD” means the Seneca County General Health District.

“SWPPP” means the Storm Water Pollution Prevention Plan developed pursuant to the NPDES permit.

CONDITIONS

1. Licensee shall maintain the Facility’s gas collection and control system to ensure its proper operation to prevent subsurface gas migration and odors. Within 60 days after issuance of this License, Licensee shall submit a report to SCGHD providing SCGHD with all data that was collected for each gas collection well pursuant to Condition No. 1 of Licensee’s 2023 license. Licensee shall correct any and all deficiencies in Licensee’s implementation of Condition No. 1 of Licensee’s 2023 license or Licensee’s 2024 license within 60 days after receiving SCGHD’s notice of these deficiencies.
2. Licensee shall immediately notify SCGHD in the event that any flare in the Facility’s gas collection and control system becomes inoperable or is down for repairs. Licensee shall immediately notify SCGHD upon discovering that the temporary or permanent shutdown, repair, malfunction, or cessation of operation of any other component of the Facility’s gas collection and control system has reduced gas collection, increased odors, or increased sulfur dioxide emissions. Licensee shall provide SCGHD with a copy of any subsequent written statement provided to Ohio EPA pursuant to Ohio Adm. Code 3745-15-06(B) about any inoperable flare or about any other issue with the Facility’s gas collection and control system.

3. Licensee shall not operate the Facility in a manner that emits odors that endanger the health, safety, or welfare of the public, or causes unreasonable injury or damage to property.
4. Licensee shall provide SCGHD with copies of the following submittals required (or otherwise provided for) by the Consent Order:
 - a. The monthly reports required by Paragraph 16. A. i;
 - b. Any written requests to reduce reporting frequency submitted by Licensee pursuant to Paragraph 16. A. ii;
 - c. Any written requests to terminate monitoring submitted by Licensee pursuant to Paragraph 16. A. iii;
 - d. The monthly reports required by Paragraph 16. E;
 - e. The annual report required by Paragraph 16. F;
 - f. All monthly reports and any notifications required by paragraph 16. I. iv; and,
 - g. All submissions to Ohio EPA required by paragraph 16. M;

Licensee shall provide SCGHD with copies of each of the submittals listed above not later than seven days after submittal to Ohio EPA pursuant to the Consent Order.

5. Licensee shall provide SCGHD with copies of all future reporting submitted to Ohio EPA pursuant to Section C. 1. e) of Ohio EPA Permit to Install (“PTI”) P0128797 issued on December 1, 2021 and all reports to Ohio EPA pursuant to the Facility’s Title V permit. Licensee shall provide SCGHD with copies of each submittal not later than seven days after submission to Ohio EPA.
6. Licensee shall provide SCGHD with at least two days advance notice that identifies the dates on which Licensee will place the first layer of waste on any composite liner pursuant to Ohio Adm. Code 3745-27-19(D)(1) or, if promulgated as a final rule, Ohio Adm.Code 3745-535-610(C)(1).
7. Licensee shall contain all litter at the Facility so that it is not blown into or deposited on property not owned by Licensee.
8. Licensee shall not apply water to the waste in rail cars in quantities that result in the leakage of water or other liquids from the rail cars. Any water or other liquids leaking from the rail cars inside the rail car unloading building shall be contained on a concrete slab sloped to direct the liquids into a leachate collection sump. The liquids shall be lawfully disposed of at a wastewater treatment facility.
9. Licensee shall require all rail cars of waste entering the Facility to employ measures that prevent litter from being blown off or escaping from the rail cars. Licensee shall not allow any rail car to enter the Facility if the rail car does not employ these measures.

10. Licensee shall repair ponding, erosion, and leachate outbreaks where waste is being deposited or has been deposited and shall undertake the actions necessary to correct the conditions causing ponding, erosion, or leachate outbreaks as soon as practical, but no later than three hours after discovery.
11. Licensee shall require all rail cars of waste entering the Facility to be either watertight or covered with an impermeable and watertight cover so that water and/or other liquids do not leak from the rail cars. Licensee shall daily inspect the loaded and unloaded rail cars at the Facility for leaks or spills of water or other liquids from inside the rail cars and for leaks and spills of oil and hydraulic fluids from the rail cars. Immediately after discovering any such leaks or spills of water or other liquids from inside the rail cars or leaks or spills of oil and hydraulic fluids from the rail cars, Licensee shall stop the leaks and spills or capture them in containers, mats, or other devices to prevent them from entering soil or gravel and shall remove any leaked or spilled materials that have already fallen onto soil or gravel. Licensee shall keep a daily log of inspections conducted pursuant to this condition, including the date and time of each inspection, a description of any leaks and spills, and a description of any actions taken to stop or remediate the leaks and spills. Licensee shall make this log available for SCGHD's review at the Facility and shall provide SCGHD with copies of the log upon request.
12. The Facility shall not discharge pollutants into wetlands or other waters of the state, except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit issued by the Director of Environmental Protection. Licensee shall notify SCGHD within 30 minutes after the discovery of any such discharge.
13. Licensee shall provide SCGHD with a copy of each future update or revision to the SWPPP within five business days after preparing the update or revision.
14. Licensee shall provide SCGHD with a copy of each inspection report documenting the results of any future inspection pursuant to the NPDES permit or the SWPPP within one business day after preparing the report.
15. Licensee shall provide SCGHD with a copy of each report documenting the results of any future quarterly visual assessment pursuant to the NPDES permit or the SWPPP within one business day after preparing the report.
16. Licensee shall provide SCGHD with a copy of each future documentation pursuant to Paragraphs D.3 and D.4 of Part IV of the NPDES permit or equivalent provisions of future NPDES permits within one business day after its preparation.
17. Licensee shall provide SCGHD with a copy of each Discharge Monitoring Report submitted to Ohio EPA pursuant to the NPDES permit on the same day as the report was submitted to Ohio EPA.

18. Licensee shall provide SCGHD with a copy of each future update or revision to the Spill Prevention, Control, and Countermeasure (SPCC) plan for the Facility within five business days after preparing the update or revision.
19. Licensee shall provide SCGHD with a copy of each inspection report documenting the results of any future inspection pursuant to any SPCC plan within one business day after preparing the report.
20. Licensee shall provide SCGHD with the documentation of all future employee training pursuant to the NPDES permit within five business days after conducting the training.
21. Licensee shall prevent dust from the Facility, including its rail car unloading area, roads, and soil borrow pits, from entering property not owned by Licensee in such a manner or in such amounts as to endanger the health, safety or welfare of the public or cause unreasonable injury or damage to property.
22. By April 30, 2024, Licensee shall provide SCGHD with a report that identifies and provides written documentation of the number of cubic yards of landfill space that was filled in 2023, the number of cubic yards of cover material incorporated into that filled landfill space in 2023, and the tonnage of waste received by the Facility in 2023 that was incorporated into that landfill space. The report shall provide an Airspace Utilization Factor conversion ratio to reconcile the amount of waste by weight as measured upon entry into the Facility with the amount of space occupied by that waste upon incorporation into the landfill. The report shall provide documentation for the accuracy of that ratio.
23. Licensee shall provide SCGHD, its representatives, and contractors with access at reasonable times to the Facility and to any other property in the Facility's vicinity controlled by or available to Licensee, to inspect or investigate, obtain samples and monitoring data, verify data and information submitted to SCGHD, and examine or copy records to determine compliance with this License, the Consent Order, R.C. Chapters 3704, 3714, and 3734, and the rules and permits issued pursuant to those chapters, and to protect public health and safety and the environment.
24. All written notices, reports, and information provided to SCGHD pursuant to these License conditions shall be submitted by email to the Health Commissioner, the Director of Environmental Health, and the environmental health specialist who inspects the Facility, using email addresses provided by SCGHD.

EXHIBIT B

*WIN Waste Innovations of Seneca County LLC v. Julie Richards,
Health Commissioner, Seneca County General Health District,
[f.k.a. Laura Wallrabenstein, Interim Health Commissioner],
Notice of Appeal, Case No. ERAC 23-7181 (June 16, 2023)*

(the “Landfill”). The License is attached hereto as Exhibit A and was issued on May 25, 2023. Sunny Farms received notice of the License on May 26, 2023. Thus, this appeal is timely filed.

MATTER PENDING BEFORE OHIO SUPREME COURT

1. The issuance of this License is presently pending before the Ohio Supreme Court in *State of Ohio ex rel. WIN Waste Innovations of Seneca County LLC, formerly known as Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (June 7, 2023). In that case, Appellant asserts that the License was issued in violation of the Ohio Open Meetings Act and therefore is invalid, pursuant to R.C. §121.22. On June 7, 2023, Appellant filed a Verified Amended Complaint asking the Ohio Supreme Court for mandamus relief to compel SCGHD to issue the License in compliance with Ohio’s Open Meetings Act. Appellant’s Verified Amended Complaint is attached hereto at Exhibit 13. As described below, Appellant respectfully asserts that the instant appeal before this Commission should not proceed until the pending mandamus action before the Ohio Supreme Court is concluded since the Ohio Supreme Court action affects the interests of the Parties in this appeal. Appellant timely files this Notice of Appeal to preserve its rights under R.C. §3745.04. Appellant is also filing a Motion for Stay requesting that this Commission stay the License pending the resolution of the Ohio Supreme Court case.

BACKGROUND FACTS

2. Sunny Farms operates a municipal solid waste landfill in Fostoria, Seneca County, Ohio and has operated this facility for over 50 years.

3. In 2022, Sunny Farms operated the Landfill in substantial compliance with Ohio’s environmental laws and regulations. The Seneca County Board of Health (the “Board”), which is the governing body of the SCGHD, conducted 31 inspections of the Landfill in 2022 and found no violations of applicable environmental laws and regulations and issued zero notices of violations

to Sunny Farms. In addition, Sunny Farms has been in full and substantial compliance with the Partial Consent Order and Final Judgment Entry (“Consent Order”) issued by the Seneca County Common Pleas Court on July 26, 2019 in Case No. 19-CV-0224. *See* Exhibit 1 attached hereto.

4. Each year, Sunny Farms is required to renew its operating license with the Board. Accordingly, Sunny Farms has applied for and ultimately received its annual license each year, until this year.

5. On September 27, 2022, Sunny Farms timely submitted its application to the Board to renew the annual operating license for Sunny Farms Landfill. *See* Exhibit 2 attached hereto. Pursuant to OAC 3745-501-20(C)(4)(a), the Board is required to issue or deny the license within 90 days (*i.e.*, by December 26, 2022).

6. Following submittal of the annual operating license application, the Board did not communicate any alleged deficiency in Sunny Farms’ application or any alleged violations of applicable environmental laws and regulations by Sunny Farms.

7. On November 23, 2022, an Ohio EPA Division of Materials and Waste Management representative informed the Board that Sunny Farms was in “substantial compliance” with applicable environmental regulations, stating that Sunny Farms “does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.” *See* Exhibit 3 attached hereto.

8. On December 13, 2022, a Health District employee advised Sunny Farms that the Board was expected to consider several conditions to the 2023 license. *See* Exhibit 4 attached hereto.

9. Sunny Farms responded on December 15, 2022 with a letter to the Board, outlining its disagreement with the conditions that the Board was considering including with the 2023 license and arguing that these conditions were unreasonable, unlawful, and not within the scope of the Board's authority. *See* Exhibit 4 attached hereto.

10. On December 29, 2022, the Board held a special meeting regarding Sunny Farms' license renewal application. At that meeting, the Board's employees and outside counsel agreed that the Board should grant Sunny Farms' 2023 license. *See* Dec. 29, 2022 Board Meeting Minutes, attached hereto as Exhibit 5 ("No Notices of Violation have been issued against Sunny Farms Landfill in 2021 or 2022 by the Health District for non-compliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there are no violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license.").

11. The Board ignored the recommendations of Ohio EPA and its own staff and leadership and voted on December 29, 2022 to issue a notice of intent to deny the license. *Id.*

12. On January 3, 2023, eight days after the Board was required by law to issue or deny the license, the Board issued the Notice of Intent to Deny ("the Notice"). *See* Exhibit 6 attached hereto. The Notice contained no legal or factual explanation for the denial.

13. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. §3709.20 and OAC 3745-500-120. *See* Exhibit 7 attached

hereto. Sunny Farms requested the appointment of a hearing examiner, a discovery schedule, and a procedure to address the Board's Notice.

14. After requesting a hearing, Sunny Farms received no response from the Board despite its many attempts to contact the Board to arrange for the hearing and procedure for addressing the Notice.

15. As a result, on April 11, 2023, Sunny Farms contacted Ohio EPA by letter, apprising the Agency of the Board's ongoing violations and its failure to act on Sunny Farms' 2023 license. *See* Exhibit 4 attached hereto. Sunny Farms requested that Ohio EPA determine that the Board is not eligible to remain on Ohio EPA's list of approved boards of health because the Board is not substantially complying with Ohio's solid waste laws and regulations. Sunny Farms' letter detailed the Board's unlawful conduct and the unethical behavior of certain Board Members.

16. For example, the Board's Health Commissioner, Anne Goon, who had decades of experience in the health commissioner role, made the determination at the December 29, 2022 meeting that Sunny Farms' license should be renewed. Then, four months later, at its meeting on April 27, 2023, the Board fired Ms. Goon, offering no reason or explanation for her termination. *See* Apr. 27, 2023 Board Meeting Minutes, attached hereto as Exhibit 8. Ms. Goon's termination was the subject of the Board's May 15, 2023 meeting which will be continued at a future date or hearing. *See* May 15, 2023 Board Meeting Minutes, attached hereto as Exhibit 9.

17. As a result of the Board's failure to timely act on Sunny Farms' license application and having received no response or explanation for the Notice nor a response to Sunny Farms' request for a hearing, Sunny Farms was left with no choice but to file a Verified Complaint for Mandamus Relief with the Ohio Supreme Court on May 10, 2023. *See State of Ohio ex rel. Sunny*

Farms Landfill LLC v. Seneca County Board of Health, Case No. 2023-0617 (Ohio S. Ct.), attached hereto as Exhibit 10. Sunny Farms requested that the Ohio Supreme Court issue a peremptory writ of mandamus ordering the Board to either issue the 2023 license because Sunny Farms is so entitled as a matter of law or, alternatively, issue a final action by a date certain on the 2023 license, without further proceedings, which provides Sunny Farms a right of appeal to this Commission.

18. On May 24, 2023, Sunny Farms filed a second Verified Complaint for Mandamus Relief with the Ohio Supreme Court in response to the Board's violations of Ohio's Public Records Act, R.C. §149.43(B). *See State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0676 (Ohio S. Ct.). *See* Exhibit 11 attached hereto. Members of the Board stated in public meetings that they had used their personal email addresses for all communications, because the Board had not yet created Board email addresses. On September 23, 2022, Ben Nutter, WIN Waste Innovations' Community Engagement Specialist, submitted Sunny Farms' first public records request, which included a request for copies of the aforementioned emails. *See* Exhibit 12 attached hereto. After six months and a number of follow up requests to the Board for these documents, Sunny Farms had no alternative than to file its second Verified Complaint for Mandamus Relief with the Ohio Supreme Court, seeking a peremptory writ of mandamus ordering the Board to: (1) comply with the Public Records Act; (2) provide the responsive requested records, including emails and text messages to and from members of SCGHD or the Board; (3) certify that each member of the Board performed the required searches on their personal accounts and devices; (4) recover any emails, texts, or other records that may have been deleted; and (5) provide an explanation for denying Sunny Farms' request, in whole or in part, and the legal authority for doing so.

19. Fifteen days after Sunny Farms filed its first writ of mandamus, on May 25, 2023, the Board issued the License with 25 conditions, all of which are unlawful, unreasonable, arbitrary and capricious, and/or outside of the scope of the Board's authority. *See* Exhibit A attached hereto. The Board's meeting on May 25, 2023 was a regularly scheduled meeting; however, promptly after beginning the meeting, the Board moved to an executive session (*i.e.*, closed session) for approximately two hours. After exiting the executive session, the Board voted to issue the License with conditions, without any public discussion or deliberation.

20. The Board's May 25, 2023 meeting was held in contravention of Ohio's Open Meetings Act, R.C. §121.22. As a result, on June 7, 2023, Sunny Farms filed a Verified Amended Complaint for Mandamus Relief in *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.), alleging that the License is invalid due to the Board's deliberations and voting on the License in a meeting that was not open to the public. *See* Exhibit 13 attached hereto.

21. Because the Board's issuance of the License in contravention of the Ohio Open Meetings Act rendered the License invalid, Sunny Farms continues to operate its Landfill in full compliance with its 2022 license, which it is authorized to do under the law.

22. Clearly, the Board was in no hurry to act on Sunny Farms' 2023 license application or issue any terms and conditions to a 2023 license. The Board has not included additional terms and conditions in a license to Sunny Farms *in years* and made no allegation that any conditions are necessary to ensure compliance with Ohio's solid waste laws and regulations. Yet, after having a 2021 and 2022 license *with no conditions*, and despite being in substantial compliance as determined by Ohio EPA in November 2022, Sunny Farms is now faced with a 2023 license *with 25 conditions* which are, as detailed below, erroneous, arbitrary, unreasonable, and unlawful.

ASSIGNMENTS OF ERROR, OBJECTIONS, AND ISSUES TO BE RESOLVED

Sunny Farms assigns the following specific errors, objections, and issues for adjudication on the basis that the corresponding provisions in the License are erroneous, arbitrary, unreasonable, and unlawful:

- 1. The Board should have issued Sunny Farms' License without conditions by December 26, 2022, because Sunny Farms met all the criteria for license issuance in Ohio EPA's regulations and Ohio EPA determined that Sunny Farms is in substantial compliance.**

Sunny Farms timely submitted its complete license application on September 27, 2022. A board has "ninety days after the date upon which" the operator submits its application to "issue or deny" the license. OAC 3745-501-20(C)(4)(a). That meant the Board had until December 26, 2022 (90 days after September 27) to issue a final decision approving or denying Sunny Farms' application. The Board failed to issue a final decision until May 26, 2023 and even *that* decision was ultimately invalid because it was reached in violation of the Open Meetings Act. From the date Sunny Farms submitted its application until the Board finally issued the (invalid) license, the Board did not identify a single deficiency in Sunny Farms' application nor find that Sunny Farms failed to meet any standard necessary to secure its operating license. Because Sunny Farms met all the criteria in OAC 3745-501-15, and Ohio EPA determined that Sunny Farms is in substantial compliance, the Board had a clear legal duty to issue the License, without conditions, by December 26, 2022. The Board's action is therefore unreasonable, unlawful, arbitrary and capricious.

- 2. The License conditions are beyond the scope of the Board's authority and are not necessary to ensure compliance with Ohio's solid waste laws and regulations.**

Sunny Farms is in full, substantial compliance with applicable environmental laws and regulations and the permits issued by Ohio EPA. In addition, Sunny Farms is in full compliance with the Consent Order, which requires it to comply with obligations that are far more stringent than currently applicable solid waste management laws and regulations. These stringent

requirements were the result of unique circumstances at Sunny Farms, which no longer exist. Sunny Farms completed construction of a \$54M gas treatment system designed to reduce emissions by 98%. According to a recent report, Ohio EPA inspected the Landfill's new treatment system on June 6, 2023 and "verified that the equipment is treating all landfill gas and removing more than the required amount of hydrogen sulfide prior to flaring the gas in a new enclosed flare." See Tom Henry, *\$54 million landfill system seeks to eliminate odors, reduce emissions at Sunny Farms*, TOLEDO BLADE, June 8, 2023, attached hereto as Exhibit 14.

Sunny Farms believes that absent voluntary agreement, many of the terms in the Consent Order are beyond those that may be imposed unilaterally by Ohio EPA and/or other permitting and licensing bodies. Similarly, the Board's authority to impose license conditions is limited. The Board may include *only* such terms and conditions in a license "as are appropriate to ensure compliance" with R.C. Chapter 3734 and the rules adopted under it. See R.C. § 3734.05(A)(1). In addition, "[t]erms and conditions included in a license or revision to a license by a board of health *shall be consistent with, and pertain only to the subjects addressed in*, the rules adopted under division (A) of section 3734.02 and division (D) of section 3734.12 of the Revised Code." *Id.* (emphasis added). The new conditions in the License are unnecessary and not appropriate to ensure compliance with the solid waste laws and regulations because Sunny Farms is already in compliance with these requirements. Further, the conditions are not *consistent with, and pertain only to the subjects addressed in*, the applicable rules adopted under R.C. § 3734.02(A) and R.C. § 3734.12(D). The Board acted erroneously, arbitrarily, unreasonably, and unlawfully in unilaterally imposing conditions in the License. Sunny Farms requests that this Commission order the Board to remove all of the 25 new conditions in the License.

3. Conditions 1.a. and 1.b. regarding the actual achieved radius of influence for each gas collection well are unreasonable, unlawful, arbitrary and capricious, and not consistent with standard industry practice.

Condition 1.a. requires Sunny Farms to “determine the actual achieved radius of influence for each gas collection well” by October 31, 2023 based on operating parameters including, but not limited to, quarterly average applied vacuum level, percentage of engineered perforation length available for gas exchange, and maximum elevation difference between the top of open well perforations and the Landfill’s surface elevation at the location of the well. Condition 1.b. requires that if any gas collection well’s actual achieved radius of influence is less than 75% of that well’s engineered minimum radius of influence, Sunny Farms must investigate the cause within 30 days of the deficiency, implement corrective actions within 90 days of identifying the deficiency, and maintain records of all wells with deficiencies and submit copies of these records to the Board by November 30, 2023. These Conditions are unlawful and unreasonable. Sunny Farms is already required by law and relevant air permits to “maintain the Facility’s gas collection and control system to ensure its proper operation to prevent subsurface gas migration and odors” as required, generally, by Condition 1. However, Conditions 1.a. and 1.b. impose requirements that are not typical industry practice and are not required for similarly situated facilities. Therefore, Sunny Farms requests that this Commission order the Board to remove Conditions 1.a. and 1.b. from the License because they are unreasonable, unlawful, and arbitrary and capricious.

4. Condition 2 regarding flares at the Landfill is unnecessary and redundant of current standard practice.

Condition 2 requires Sunny Farms to “immediately notify SCHD in the event that any flare in the Facility’s gas collection and control system becomes inoperable or is down for repairs” and requires Sunny Farms to “provide SCHD with a copy of any subsequent written statement provided to Ohio EPA pursuant to Ohio Adm. Code 3745-15-06(B) about any inoperable flare or about any

other issue with the Facility's gas collection control system." This Condition is unnecessary as Sunny Farms already provides this notification and documentation to the Board. Therefore, Sunny Farms requests that this Commission order the Board to remove Condition 2 from the License.

5. Conditions 3, 7, 10, and 22 are unnecessary, redundant, and already required by applicable regulations.

Condition 3 requires that Sunny Farms "not operate the Facility in a manner that emits odors that endanger the health, safety, or welfare of the public, or causes unreasonable injury or damage to property." Pursuant to OAC 3745-15-07, Ohio EPA prohibits air pollution nuisances, prohibiting operations that "emit such amounts of odor as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to property." Similarly, Condition 7 requires Sunny Farms to "contain all litter at the Facility so it is not blown into or deposited on property not owned by the Licensee," which is already regulated by Ohio EPA at OAC 3745-27-19(E)(9) ("The owner or operator shall employ all reasonable measures to collect, properly contain, and dispose of scattered litter ..."). Condition 10 requires Sunny Farms to "repair ponding, erosion, and leachate outbreaks where waste is being deposited or has been deposited" and "undertake the actions necessary to correct the conditions causing ponding, erosion, or leach outbreaks as soon as practical, but no later than three hours after discovery," which is addressed by Ohio EPA at OAC 3745-27-19(J) ("If ponding or erosion occurs on areas of the sanitary landfill facility where waste is being, or has been, deposited, the owner or operator shall undertake actions as necessary to correct the conditions causing the ponding or erosion."). In addition, the requirement to undertake corrective action *no later than three hours after discovery* is unreasonable given the fact-specific nature of any necessary corrective action. Condition 22 requires Sunny Farms to "prevent dust from the Facility, including its rail car unloading area, roads, and soil borrow pits, from entering property not owned by Licensee in such a manner or in such amounts as to endanger the health,

safety, or welfare of the public or cause unreasonable injury or damage to property,” which is addressed by applicable regulations. *See, e.g.*, OAC 3745-27-19(B)(3) (“The owner or operator shall operate the facility in such a manner that noise, dust, and odors are strictly controlled so as not to cause a nuisance or a health hazard.”); OAC 3745-27-19(E)(7)(f) (requiring the owner or operator to ensure “[d]usty materials are handled, compacted, and covered in such a manner as to minimize the amount of dust that is generated by those materials.”). Sunny Farms has been and remains in compliance with all of these Ohio EPA regulatory provisions. Because Conditions 3, 7, 10, and 22 are redundant of or unreasonably and unlawfully exceed Sunny Farm’s current regulatory obligations, Sunny Farms requests that the Commission issue an order removing them from the License.

6. Condition 4 is unnecessary, redundant, and already required by the Consent Order.

Condition 4 requires Sunny Farms to provide the Health District with copies of submittals required under Paragraphs 16.A.i-iii, 16.E, 16.F, 16.I.iv, and 16.M of the Consent Order. However, pursuant to the Consent Order, Sunny Farms has already agreed to provide these submittals to both Ohio EPA and the Health District and is in full compliance with this requirement. Therefore, because Condition 4 is unnecessary and redundant of Sunny Farms’ current obligations, Sunny Farms requests that this Commission issue an order removing Condition 4 from the License.

7. Condition 5 is unnecessary, unreasonable and outside of the scope of the Board’s authority.

Condition 5 requires all future reporting submittals to Ohio EPA under Sunny Farms’ air pollution control permits to be submitted to the Health District within seven days after submission to Ohio EPA. The Health District does not have jurisdiction to regulate Sunny Farms as it pertains to air pollution control matters. *See* R.C. § 3734.05(A)(1). Requiring Sunny Farms to submit all

air reports to the Health District is unnecessary, unreasonable and beyond the scope of the Board's authority and, as such, Sunny Farms requests that this Commission issue an order removing Condition 5 from the License.

8. Condition 6 is unreasonable, arbitrary and capricious, erroneous, unlawful and outside of the scope of the Board's authority.

Condition 6 requires Sunny Farms to "provide SCHD with at least two days advance notice that identifies the dates on which Licensee will place the first layer of waste on any composite liner pursuant to Ohio Adm. Code 3745-27-09(D)(1)." Importantly, the erroneously cited Administrative Code section, 3745-27-09(D)(1), pertains to Ohio EPA's review of documents in the operating record and provides no authority for the Board to seek advanced notice of when Sunny Farms will place the first layer of waste on any composite liner. Presumably, the Board intended to cite to OAC 3745-27-19(D)(1), which also contains no requirement for notification prior to waste placement. Furthermore, the Board lacks the authority to include such a condition in the License. Therefore, Condition 6 is unreasonable, arbitrary and capricious, erroneous, and unlawful, and Sunny Farms requests that this Commission issue an order requiring its removal from the License.

9. Condition 8 is unreasonable, unlawful and outside of the Board's authority.

Condition 8 prohibits Sunny Farms from applying "water to waste in rail cars in quantities that result in the leakage of water or other liquids from the rail cars" and requires that "[a]ny water or other liquids leaking from the rail cars inside the rail car unloading building shall be contained on a concrete slab sloped to direct the liquids into a leachate collection sump" and the "liquids shall be disposed of at a wastewater treatment facility." Leachate is already collected and properly managed at the Landfill facility. The rail unloading building currently has an Ohio EPA-approved collection sump that collects and conveys collected liquid to the Landfill's leachate collection

system for proper disposal. Furthermore, Condition 8 is outside of the scope of the authority of an approved health district. Finally, Sunny Farms' air permit *requires* the application of water for dust control as a condition of compliance. Condition 8 conflicts with this air permit and thereby interferes with Sunny Farms' ability to comply with its air permit. Therefore, Sunny Farms requests that this Commission issue an order removing Condition 8 from the License.

10. Conditions 9 and 11 are unreasonable, unlawful, and outside of the scope of the Board's authority.

Condition 9 requires Sunny Farms to "require all rail cars entering the Facility to employ measures that prevent litter from being blown off or escaping from rail cars" and prohibits Sunny Farms from allowing any rail car to enter the Facility "if the rail car does not employ those measures." Condition 11 requires "all rail cars of waste entering the facility to be either covered or be watertight so that water and/or other liquids do not leak from the rail cars" and requires that "[a]ny water or other liquids leaked from inside the rail cars onto gravel or soil at the Facility shall be immediately contained to prevent runoff and *immediately removed from the soil or gravel.*" (Emphasis added). These Conditions are overbroad, unlawful and unreasonable. Because Conditions 9 and 11 are unreasonable, unlawful, and outside of the scope of the Board's authority, Sunny Farms requests that this Commission issue an order removing Conditions 9 and 11 from the License.

11. Part of Condition 12 is already regulated by Ohio EPA and the remainder is unreasonable and arbitrary and capricious.

Condition 12, in part, requires that the Facility "not discharge pollutants into wetlands or other waters of the state, except as authorized by a National Pollutant Discharge Elimination System ('NPDES') permit issued by the Director of Environmental Protection." This Condition is unnecessary as it is redundant of current regulatory requirements under Ohio's NPDES regulations and exceeds the Board's authority. *See* OAC 3745-33-02. Further, Condition 12

unreasonably requires notification to the Board *within 30 minutes of the discovery of any discharge*. Condition 12 also requires Sunny Farms to provide “copies of all reports that have been prepared about spills, releases, and discharges of contaminants that have occurred since January 1, 2022” within 30 days. This requirement is unreasonable and arbitrary and capricious, and the Board provides no basis for this Condition. Sunny Farms is in substantial compliance with applicable regulations. Sunny Farms complies with all recordkeeping requirements and those documents are available on-site for the Board’s review at its request. Because part of Condition 12 is already regulated by Ohio EPA and the remainder of Condition 12 is unreasonable and arbitrary and capricious, Sunny Farms requests its removal from the License.

12. Conditions 13, 14, 15, 17, 18, 19, 20, and 21 are unreasonable and arbitrary and capricious.

Condition 13 requires that within five business days after issuance of the License, Sunny Farms must provide the Health District with a copy of the current SWPPP “developed pursuant to the NPDES permit” and provide the Health District “with a copy of each future update or revision to the SWPPP within five business days after preparing the update or revision.” Condition 14 requires Sunny Farms to provide within 30 days after issuance of the License “copies of all reports for all inspections conducted since January 1, 2022 pursuant to the NPDES permit or the SWPPP” and to provide the Health District “with a copy of each inspection report documenting the results of any future inspection pursuant to the NPDES permit or the SWPPP within one business day after preparing the report.” Condition 15 requires that within 30 days of issuance of the License, Sunny Farms must provide “copies of all written documentation pursuant to the NPDES permit of the quarterly visual assessments of storm water discharges that have been conducted since January 1, 2022” and provide the Health District “with a copy of each report documenting the results of any future quarterly visual assessment pursuant to the NPDES permit or the SWPPP within one

business day after preparing the report.” Condition 17 requires that within 30 days after the issuance of the License, Sunny Farms must provide the Health District with “written documentation required by Paragraphs D.3 and D.4 of Part IV of the NPDES permit” and “a copy of all future documentation” pursuant to those sections “or equivalent provisions of future NPDES permits within one business day after its preparation.” Condition 18 requires Sunny Farms to provide the Health District with “a copy of each Discharge Monitoring Report submitted to Ohio EPA pursuant to the NPDES permit on the same day as the report was submitted to Ohio EPA.” Condition 19 requires that within five business days after issuance of the License, Sunny Farms must provide the Health District with the current Spill Prevention, Control, and Countermeasure plan, if any, and provide the Health District with any future update or revision to the plan within five business days after preparing the update or revision. Condition 20 requires that within 30 days after issuance of the License, Sunny Farms must provide the Health District “with copies of all reports of inspections conducted since January 1, 2022 pursuant to any SPCC plan for the Facility” and provide the Health District with “a copy of each inspection report documenting the results of any future inspection pursuant to any such SPCC plan within one business day after preparing the report.” Condition 21 requires that within 30 days after issuance of the License, Sunny Farms must provide the Health District with “copies of all documentation of employee training conducted for current Facility employees pursuant to the NPDES permit, along with a list of all current employees” and provide the Health Department “with documentation of all future employee training pursuant to the NPDES permit within five days after conducting the training.” These Conditions are unlawful, unreasonable and arbitrary and capricious with the Board providing no basis for their inclusion. Sunny Farms is in substantial compliance with all applicable regulations and permits. In addition, it has complied with and continues to comply with all

applicable recordkeeping requirements and those documents are available for on-site review at the Board's request. Finally, submittals of such records are not required by the underlying NPDES regulations which further illustrates the unreasonable nature of the condition. Therefore, Sunny Farms requests that this Commission remove Conditions 13, 14, 15, 17, 18, 19, 20, and 21 as they are unreasonable and arbitrary and capricious.

13. Condition 16 is unnecessary as Sunny Farms has already completed all necessary action items.

Condition 16 requires that within 60 days of issuance of the License that Sunny Farms "implement all recommendations in the letter dated April 7, 2023 from Malloreay Smith of Ohio EPA to David Follett of Licensee." Sunny Farms has completed all necessary action items in response to the April 7, 2023 letter from Ohio EPA. Moreover, Condition 16 is beyond the Board's scope of authority. Therefore, Sunny Farms requests that this Commission issue an order removing Condition 16 from the License.

14. Condition 23 is unreasonable, unlawful and outside of the Board's scope of authority.

Condition 23 requires Sunny Farm to provide within 60 days after issuance of the License "a report that identifies and provides written documentation of the number of cubic yards of landfill space that was filled in 2022, the number of cubic yards of cover material incorporated into that landfill space in 2022, and the tonnage of waste received by the Facility in 2022 that was incorporated into that landfill space." It further requires that the report "provide an Airspace Utilization Factor conversion ratio to reconcile the amount of waste by weight as measured upon entry into the Facility with the amount of space occupied by that waste upon incorporation into the landfill" and provide "documentation for the accuracy of that ratio." This Condition is unreasonable given Sunny Farms' documented substantial compliance. In addition, this Condition is unlawful as it is not required by existing regulation, and it is outside of the scope of the Board's

authority. Because Condition 23 is unreasonable and unlawful, Sunny Farms requests that this Commission issue an order removing it from the License.

15. Conditions 24 and 25 are unnecessary, redundant and unreasonable.

Conditions 24 and 25 require Sunny Farms to provide access to its facility to the Health District and submit documents by email to Health District employees. Sunny Farms is already required to provide proper access under the solid waste laws and submit proper documentation to the Health District if required under the solid waste laws. Because Conditions 24 and 25 are unnecessary, redundant, and unreasonable, Sunny Farms requests that this Commission issue an order removing the Conditions from the License.

16. The License is invalid as it was deliberated on and voted on in a meeting held in violation of Ohio's Open Meetings Act.

The Board is a public body, and Ohio law requires that “[a]ll meetings of [the Board] are ... to be public meetings open to the public at all times.” *See* R.C. §121.22(C). Any “formal action adopted in an open meeting that results from deliberations in a matter does not open to the public is invalid” unless certain exceptions apply. *See* R.C. §121.22(H). The Board did not allow for public deliberation of the license application or the conditions that the Board intended to include with the License. The Verified Amended Complaint for mandamus relief attached at Exhibit 13 is incorporated into this assignment of error by reference. The Verified Amended Complaint sets forth the basis for the conclusion that the Board’s action, subject to this notice of appeal, is invalid. Appellant’s Motion for Stay filed contemporaneously with this Notice of Appeal sets forth the rationale for Appellant’s assertion that the instant matter should not proceed pending a final resolution of the Amended Complaint by the Ohio Supreme Court. However, if this Commission determines it is appropriate to proceed in this appeal prior to final action by the

Supreme Court, Appellant requests the Commission to issue an order finding the Board's action issuing the License is invalid as it was taken in violation of Ohio's Open Meetings Act.

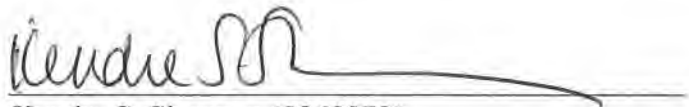
- 17. Sunny Farms reserves the right to add additional assignments of error as they become apparent, particularly as the discovery process proceeds in this appeal.**

PRAYER FOR RELIEF

WHEREFORE, Sunny Farms respectfully requests that the Commission:

- a. Stay further proceedings on this matter and stay the effective date of the License conditions pending conclusion of related matters now before the Ohio Supreme Court;
- b. At the appropriate time, conduct a hearing *de novo* pursuant to ORC §3745.05 and OAC 3746-7-01(A);
- c. If within the jurisdiction of ERAC, issue an Order finding the License invalid based on the Board's violation of the Open Meetings Act;
- d. Issue an Order vacating all unlawful, unreasonable, arbitrary, or capricious conditions or requirements in the referenced License; and
- e. Grant such other relief as the Commission may deem appropriate and just.

Respectfully submitted,



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*Attorneys for WIN Waste Innovations of
Seneca County LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of WIN Waste Innovations of Seneca County LLC was served on this 16th day of June, 2023 via first class U.S. Mail upon the following:

Laura Wallrabenstein
Interim Health Commissioner
Seneca County General Health District
71 S. Washington Street
Tiffin, Ohio 44883

Jack A. Van Kley
Van Kley Law, LLC
132 Northwoods Blvd.
Suite C-1
Columbus, Ohio 43235

William Haak
Haak Law LLC
12595 Brentwood Dr.
Chesterland, Ohio 44026

and

Aaron Farmer, Esq.
Section Chief
Environmental Enforcement Section
Office of the Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215



Kendra S. Sherman
*Attorney for WIN Waste Innovations of
Seneca County LLC*

List of Exhibits

Exhibit A - 2023 Annual Operating License Issued by the Seneca County General Health District to WIN Waste Innovations of Seneca County LLC on May 25, 2023

Exhibit 1 - Partial Consent Order and Final Judgment Entry, Seneca County Court of Common Pleas, Case No. 19-CV-0224 (July 26, 2019)

Exhibit 2 - Sunny Farms' Annual Operating License Application (Sept. 27, 2022)

Exhibit 3 - Email from M. Reiser, Ohio EPA, to L. Wallrabenstein, SCGHD (Nov. 23, 2022)

Exhibit 4 - Letter to Director A. Vogel, *et al.* of Ohio EPA (April 11, 2023)

Exhibit 5 - Board Meeting Special Meeting Minutes (Dec. 29, 2022)

Exhibit 6 - Notice of Intent to Deny (Jan. 3, 2023)

Exhibit 7 - Sunny Farms' Request for Hearing (Jan. 19, 2023)

Exhibit 8 - April 27, 2023 Board Meeting Minutes

Exhibit 9 - May 15, 2023 Board Meeting Minutes

Exhibit 10 - Verified Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (May 10, 2023)

Exhibit 11 - Verified Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0676 (Ohio S. Ct.) (May 24, 2023)

Exhibit 12 - Letter from Ben Nutter, WIN Waste Innovations' Community Engagement Specialist, to the Board (Sept. 23, 2022)

Exhibit 13 - Verified Amended Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (June 7, 2023)

Exhibit 14 - Tom Henry, *\$54 million landfill system seeks to eliminate odors, reduce emissions at Sunny Farms*, TOLEDO BLADE (June 8, 2023)

Exhibit A

2023 Annual Operating License Issued by the Seneca County General Health District to WIN Waste Innovations of Seneca County LLC on May 25, 2023



Seneca County General Health District
92 E. Perry St., Tiffin OH 44883
Phone: (419) 447-3691
Fax: (419) 448-5782
401 Kirk St., Fostoria OH 44830
Phone: (419) 435-4401
www.senecahealthdept.org

May 26, 2023

Brian Ezyk
WIN Waste Innovations of Seneca County LLC
12500 W County Road 18
Fostoria, OH 44830

Dear Mr. Ezyk,

Enclosed is the 2023 Solid Waste Facility License for WIN Waste Innovations of Seneca County LLC, and attached conditions as well as the license fee invoice. The license fee is \$59,900 and must be submitted to the Seneca County General Health District by June 26, 2023. Thank you for your continued cooperation in this matter.

If you have questions, please call.

Respectfully,

A handwritten signature in cursive script, appearing to read "Laura Wallrabenstein", with a long horizontal flourish extending to the right.

Laura Wallrabenstein, MA, REHS
Interim Health Commissioner

2023



2023

Solid Waste Facility License Municipal Solid Waste Landfill

License Expires December 31, 2023

Facility: WIN Waste Innovations of Seneca County LLC CID: 37706 12500 W Co Rd 18 Fostoria, OH 44830	Licensee: Sunny Farms Landfill LLC 12500 West County Road 18 Fostoria, OH 44830
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This license has been issued in accordance with the requirements of state law, is subject to revocation or suspension for cause, and is not transferable without the consent of the approved Board of Health and the Director of the Ohio Environmental Protection Agency.


Licensing Authority: Seneca County General Health District

Conditions of Licensure:

The Licensee hereunder, its agents, employees, and all others in active concert with said licensee, including the facility owner and operator, shall be subject to and shall comply with the following conditions of this license:

1. All applicable requirements of Ohio Revised Code Chapters 3734, 3767, 6111, and 3704 and rules adopted thereunder.
2. Permits-to-install, plans, operational reports, other authorizing documents, and administrative and judicial orders applicable to this facility and as approved by the Director of the Ohio Environmental Protection Agency.
3. This license is conditional upon payment of the applicable fee to the Board of Health or the Director, as appropriate, within 30 days after issuance.
4. By applying for and accepting this license, the licensee specifically consents in advance and agrees to allow the Director, the Health District, or an authorized representative, to enter upon the licensee's premises at any reasonable time during the construction and/or operation of the facility for the purpose of inspecting, conducting tests, collecting samples, or examining records or reports pertaining to construction, modification, installation, or operation of the facility. The licensee hereby acknowledges and agrees that any and all rights of access granted herein shall not be deemed to be unreasonable or unlawful under Ohio Revised Code Sec. 3734.07. The licensee, its agents, employees, and all others in active concert with said licensee shall maintain and operate the facility to which the license pertains in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard. This license shall not be construed to constitute a defense to any civil or criminal action brought by the State of Ohio or any duly authorized representative thereof to enforce the provisions of Chapters 3734, 3767, 6111, or 3704 of the Ohio Revised Code, or regulations issued thereunder. Issuance of this license does not relieve the licensee of the duty to comply with all applicable federal, state, and local laws, regulations and ordinances.

If Checked, Additional Conditions Apply to This License (See Back, or Attachment)



Health Commissioner
interim

5/25/23

Date Issued

2023 LICENSE CONDITIONS

DEFINITIONS

The following definitions apply to these conditions:

“Consent Order” means the Partial Consent Order and Final Judgment Entry entered into by the State of Ohio and Sunny Farms Landfill LLC in Case No. 19-cv-0224 in the Court of Common Pleas of Seneca County, Ohio.

“Facility” means the landfill located at 12500 West County Road 18, Fostoria, Ohio and all appurtenances owned or operated by Licensee, including the portion of the railroad track located on property owned or operated by Licensee, roads at the landfill, borrow pits, and the rail car unloading building.

“Licensee” means the owner and operator of the Facility.

“NPDES Permit” means the National Pollutant Discharge Elimination System (“NPDES”) permit issued for the Facility by the Director of Environmental Protection and any future amendments, modifications, or renewals of this permit.

“SCHD” means the Seneca County Health District.

“SWPPP” means the Storm Water Pollution Prevention Plan developed pursuant to the NPDES permit.

CONDITIONS

1. Licensee shall maintain the Facility’s gas collection and control system to ensure its proper operation to prevent subsurface gas migration and odors, including the following.
 - a. By October 31, 2023, Licensee shall determine the actual achieved radius of influence for each gas collection well. Licensee’s determination of a well’s achieved radius of influence shall be based upon operating parameters including (but not necessarily limited to): quarterly average applied vacuum level; percentage of engineered perforation length available for gas exchange; and maximum elevation difference between the top of open well perforations and the landfill’s surface elevation at the location of the well.
 - b. If any gas collection well’s actual achieved radius of influence is less than 75% of that well’s engineered minimum radius of influence, Licensee shall take the following steps:
 - i. Investigate the cause(s) of each well with an identified actual achieved radius of influence deficiency within 30 days of identification of the deficiency;

- ii. Implement appropriate corrective actions within 90 days of the identification of a deficiency; and,
 - iii. Maintain records of the identification number(s) of all wells with deficiencies, the cause(s) of each deficiency, and the status of each corrective action. Licensee shall submit a copy of these records to SCHD by November 30, 2023.
- 2. Licensee shall immediately notify SCHD in the event that any flare in the Facility's gas collection and control system becomes inoperable or is down for repairs. Licensee shall provide SCHD with a copy of any subsequent written statement provided to Ohio EPA pursuant to Ohio Adm. Code 3745-15-06(B) about any inoperable flare or about any other issue with the Facility's gas collection and control system.
- 3. Licensee shall not operate the Facility in a manner that emits odors that endanger the health, safety, or welfare of the public, or causes unreasonable injury or damage to property.
- 4. Licensee shall provide SCHD with copies of the following submittals required (or otherwise provided for) by the Consent Order:
 - a. The monthly reports required by Paragraph 16. A. i;
 - b. Any written requests to reduce reporting frequency submitted by Licensee pursuant to Paragraph 16. A. ii;
 - c. Any written requests to terminate monitoring submitted by Licensee pursuant to Paragraph 16. A. iii;
 - d. The monthly reports required by Paragraph 16. E;
 - e. The annual report required by Paragraph 16. F;
 - f. All monthly reports and any notifications required by paragraph 16. I. iv; and,
 - g. All submissions to Ohio EPA required by paragraph 16. M;

Licensee shall provide SCHD with copies of each of the submittals listed above not later than seven days after submittal to Ohio EPA pursuant to the Consent Order.

- 5. Licensee shall provide SCHD with copies of all future reporting submitted to Ohio EPA pursuant to Section C. 1. e) of Ohio EPA Permit to Install ("PTI") P0128797 issued on December 1, 2021 and all reports to Ohio EPA pursuant to the Facility's Title V permit. Licensee shall provide SCHD with copies of each submittal not later than seven days after submission to Ohio EPA.
- 6. Licensee shall provide SCHD with at least two days advance notice that identifies the dates on which Licensee will place the first layer of waste on any composite liner pursuant to Ohio Adm. Code 3745-27-09(D)(1).

7. Licensee shall contain all litter at the Facility so that it is not blown into or deposited on property not owned by Licensee.
8. Licensee shall not apply water to the waste in rail cars in quantities that result in the leakage of water or other liquids from the rail cars. Any water or other liquids leaking from the rail cars inside the rail car unloading building shall be contained on a concrete slab sloped to direct the liquids into a leachate collection sump. The liquids shall be lawfully disposed of at a wastewater treatment facility.
9. Licensee shall require all rail cars of waste entering the Facility to employ measures that prevent litter from being blown off or escaping from the rail cars. Licensee shall not allow any rail car to enter the Facility if the rail car does not employ these measures.
10. Licensee shall repair ponding, erosion, and leachate outbreaks where waste is being deposited or has been deposited and shall undertake the actions necessary to correct the conditions causing ponding, erosion, or leachate outbreaks as soon as practical, but no later than three hours after discovery.
11. Licensee shall require all rail cars of waste entering the facility to be either covered or be watertight so that water and/or other liquids do not leak from the rail cars. Any water or other liquids leaked from inside the rail cars onto gravel or soil at the Facility shall be immediately contained to prevent runoff and immediately removed from the soil or gravel.
12. The Facility shall not discharge pollutants into wetlands or other waters of the state, except as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued by the Director of Environmental Protection. Licensee shall notify SCHD within 30 minutes after the discovery of any such discharge. Within 30 days after the issuance of this license, Licensee shall provide SCHD with copies of all reports that have been prepared about spills, releases, and discharges of contaminants that have occurred since January 1, 2022.
13. Within five business days after the issuance of this license, Licensee shall provide SCHD with a copy of the current SWPPP developed pursuant to the NPDES permit. Licensee shall provide SCHD with a copy of each future update or revision to the SWPPP within five business days after preparing the update or revision.
14. Within 30 days after the issuance of this license, Licensee shall provide SCHD with copies of all reports for all inspections conducted since January 1, 2022 pursuant to the NPDES permit or the SWPPP. Licensee shall provide SCHD with a copy of each inspection report documenting the results of any future inspection pursuant to the NPDES permit or the SWPPP within one business day after preparing the report.
15. Within 30 days after the issuance of this license, Licensee shall provide SCHD with copies of all written documentation pursuant to the NPDES permit of the quarterly visual assessments of storm water discharges that have been conducted since January 1, 2022.

Licensee shall provide SCHD with a copy of each report documenting the results of any future quarterly visual assessment pursuant to the NPDES permit or the SWPPP within one business day after preparing the report.

16. Within 60 days after issuance of this license, Licensee shall implement all recommendations in the letter dated April 7, 2023 from Malloreay Smith of Ohio EPA to David Follett of Licensee. This letter is attached and incorporated herein by reference.
17. Within 30 days after the issuance of this license, Licensee shall provide SCHD with copies of all written documentation required by Paragraphs D.3 and D.4 of Part IV of the NPDES permit. Licensee shall provide SCHD with a copy of each future documentation pursuant to Paragraphs D.3 and D.4 of Part IV of the NPDES permit or equivalent provisions of future NPDES permits within one business day after its preparation.
18. Licensee shall provide SCHD with a copy of each Discharge Monitoring Report submitted to Ohio EPA pursuant to the NPDES permit on the same day as the report was submitted to Ohio EPA.
19. Within five business days after the issuance of this license, Licensee shall provide SCHD with a copy of the current Spill Prevention, Control, and Countermeasure (SPCC) plan, if any, for the Facility. Licensee shall provide SCHD with a copy of each future update or revision to the plan within five business days after preparing the update or revision. If the Facility has no SPCC plan, Licensee shall notify SCHD of that fact within five business days after the issuance of this license, along with an explanation of why no SPCC plan is required.
20. Within 30 days after the issuance of this license, Licensee shall provide SCHD with copies of all reports of inspections conducted since January 1, 2022 pursuant to any SPCC plan for the Facility. Licensee shall provide SCHD with a copy of each inspection report documenting the results of any future inspection pursuant to any such SPCC plan within one business day after preparing the report.
21. Within 30 days after the issuance of this license, Licensee shall provide SCHD with copies of all documentation of employee training conducted for current Facility employees pursuant to the NPDES permit, along with a list of all current employees. Licensee shall provide SCHD with the documentation of all future employee training pursuant to the NPDES permit within five business days after conducting the training.
22. Licensee shall prevent dust from the Facility, including its rail car unloading area, roads, and soil borrow pits, from entering property not owned by Licensee in such a manner or in such amounts as to endanger the health, safety or welfare of the public or cause unreasonable injury or damage to property.
23. Within 60 days after the issuance of this license, Licensee shall provide SCHD with a report that identifies and provides written documentation of the number of cubic yards of landfill space that was filled in 2022, the number of cubic yards of cover material

incorporated into that filled landfill space in 2022, and the tonnage of waste received by the Facility in 2022 that was incorporated into that landfill space. The report shall provide an Airspace Utilization Factor conversion ratio to reconcile the amount of waste by weight as measured upon entry into the Facility with the amount of space occupied by that waste upon incorporation into the landfill. The report shall provide documentation for the accuracy of that ratio.

24. Licensee shall provide SCHD, its representatives, and contractors with access at reasonable times to the Facility and to any other property in the Facility's vicinity controlled by or available to Licensee, to inspect or investigate, obtain samples and monitoring data, verify data and information submitted to SCHD, and examine or copy records to determine compliance with this License, the Consent Order, R.C. Chapters 3704, 3714, and 3734, and the rules and permits issued pursuant to those chapters, and to protect public health and safety and the environment.
25. All written notices, reports, and information provided to SCHD pursuant to these License conditions shall be submitted by email to the Health Commissioner, the Director of Environmental Health, and the sanitarian who inspects the Facility, using email addresses provided by SCHD.

Exhibit 1

Partial Consent Order and Final Judgment Entry, Seneca County Court of Common Pleas, Case No. 19-CV-0224 (July 26, 2019)

- A. “Defendant” or “Sunny Farms” means Sunny Farms Landfill LLC, its landfill operations and all real property owned by Sunny Farms Landfill LLC.
- B. “State” means Plaintiff, the State of Ohio, including the Director of the Ohio Environmental Protection Agency, or the Ohio Attorney General on behalf of the State, or any State entity.
- C. “Director” means the Director of the Ohio Environmental Protection Agency (“Ohio EPA”) or her designee.
- D. “Parties” means Plaintiff, the State of Ohio, and Defendant Sunny Farms Landfill LLC.
- E. “Person” means an individual, public or private corporation, business trust, estate, trust, partnership, association, federal government or any agency thereof, municipal corporation or any agency thereof, political subdivision or any agency thereof, public agency, interstate body created by compact, any other entity, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.
- F. “Facility” or “Sunny Farms Landfill” means the sanitary landfill facility located at 12500 West County Road 18, Fostoria, Seneca County, Ohio 44830 and the real property owned by Sunny Farms Landfill LLC.
- G. “Order” or “Consent Order” refers to this Consent Order.
- H. “Written” means a paper copy or a saved or stored electronic copy.
- I. “AERMOD” means American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) Version 18081.

- J. “Ambient Air” means the definition and guidance provided in US EPA’s November 2018 draft *Revised Policy On Exclusions from “Ambient Air”* and consistent with Ohio EPA’s application of this draft policy.
- K. “Best Available Control Technology” or “BACT,” as Ohio EPA defines it, appears in Ohio Adm.Code 3745-31-01.
- L. “Collected Landfill Gas” means landfill gas that is collected by the active gas collection and control system at Sunny Farms Landfill.
- M. “Control Technology” means a pre-combustion device used to reduce the sulfur concentration in Collected Landfill Gas in a manner adequate to allow Sunny Farms Landfill to comply with the Permit.
- N. “Effective Date of the Permit” means the date that the Director of Ohio EPA issues the Permit.
- O. “Final Air Dispersion Modeling Protocol” means a document specifying the specific methodology for conducting air dispersion modeling for the purpose of the Permit. This document includes model selection, meteorological data, receptor grid, model settings, beta options, and background concentrations.
- P. “Final Air Dispersion Modeling Report” means a report of air dispersion modeling conducted in accordance with the Final Air Dispersion Modeling Protocol for the purpose of the Permit, which includes inputs, model settings, source of modeled emission rates, summary of results and graphics showing predicted concentration contours. Detailed input files, receptor network, meteorological data and model output files will be provided in electronic format.

- Q. “Installed Fixed Bed Adsorption Process” means the multiple box adsorbent media system installed at Sunny Farms Landfill in January 2019.
- R. “Interim Air Dispersion Modeling Protocol” means a document specifying the specific methodology for conducting air dispersion modeling for the purpose of identifying appropriate interim emission limits for SO₂. This document includes model selection, meteorological data, receptor grid, model settings, beta options, and background concentrations.
- S. “Interim Air Dispersion Modeling Report” means a report of air dispersion modeling conducted in accordance with the Interim Air Dispersion Modeling Protocol for the purpose of identifying appropriate interim emission limits for SO₂, which includes inputs, model settings, source of modeled emission rates, summary of results and graphics showing predicted concentration contours. Detailed input files, receptor network, meteorological data and model output files will be provided in electronic format.
- T. “Monthly Report” means a report to be submitted to Ohio EPA, Division of Air Pollution Control by the 20th day of each month with data and information from the preceding calendar month. The first Monthly Report shall be due September 20, 2019 for the preceding August 2019 calendar month.
- U. “Permit” means the final air permit issued by Ohio EPA in response to the permit application submitted by Defendant Sunny Farms pursuant to Paragraph 15.A.g.
- V. “SO₂ NAAQS” means the applicable Sulfur Dioxide National Ambient Air Quality Standard promulgated by the United States Environmental Protection Agency on June 22, 2010.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the Parties and the subject matter of this action under R.C. Chapters 2307, 3704, 3714, and 3734. The Complaint states a claim upon which relief can be granted. Venue is proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Order.

III. PARTIES BOUND

3. Sunny Farms Landfill LLC ("Sunny Farms") is an Ohio limited liability company, whose principal place of business is 12500 West County Road 18, Fostoria, Seneca County, Ohio 44830.

4. This Order shall apply to and be binding only upon Defendant and, to the extent consistent with Civ.R. 65(D), on their agents, officers, employees, contractors, assigns, successors in interest, and those persons acting in concert, privity, or participation with Defendant who receive actual or constructive notice of this Order whether by personal service, by public record filed in the county land record, or otherwise. Defendant shall provide a copy of this Order to any successor in interest and to each key employee, consultant, or contractor employed to perform work referenced herein.

5. This Order is in settlement and compromise of disputed claims, and nothing in this Order is to be construed as an admission of any facts or liability.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

6. The Plaintiff alleges in the Complaint and this Order, including but not limited to the items addressed in Exhibit A attached, that Defendant is responsible for violations of the air pollution control and solid waste laws of the State of Ohio under R.C. Chapter 3704, 3714 and 3734. Defendant denies all violations and claims alleged by the State. Compliance with this

Order shall constitute full satisfaction of any civil liability of Defendant or any of the Releasees (as defined below) to Plaintiff for all violations and claims alleged in Plaintiff's Complaint, the Director's Interim Orders issued on January 31, 2019 and this Order, including but not limited to the items addressed in Exhibit A attached. This release and full satisfaction of any civil liability of Defendant and the Releasees to Plaintiff applies to Sunny Farms Landfill LLC, any and all past, present, or future direct or indirect parents, subsidiaries or affiliates (including Tunnel Hill Reclamation LLC), any predecessor, successor or assign of any of the foregoing, and the past, present, or future direct or indirect owners, unit holders, members, shareholders, principals, directors, executives, officers, managers, employees, agents and representatives of Sunny Farms Landfill LLC or any of the foregoing (each of the foregoing, a "Releasee" and, collectively, the "Releasees").

7. Upon the Effective Date, Defendant shall have no further obligations under the 2008 Consent Order, which is superseded by the terms of this Consent Order.

8. Upon the Effective Date, the January 31, 2019 Director's Interim Findings and Orders shall be terminated, and Defendant shall have no further obligations thereunder.

9. Nothing in this Order, including the imposition of stipulated civil penalties for violations of this Order, shall limit the authority of the State of Ohio to:

- A. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations not alleged in the Complaint, the Director's Interim Findings and Orders issued on January 31, 2019, and this Order, including but not limited to the items in Exhibit A attached;

- B. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims, conditions, or violations that occur on or exist after the entry of this Order except as referenced in Exhibit A attached;
- C. Enforce this Order through a contempt action or otherwise seek relief for violations of this Order; and/or
- D. Take any future legal or equitable action against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Facility that may present a threat to public health or welfare or to environment in derogation of applicable laws and rules, which State of Ohio has the authority to enforce.

10. This Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio or other persons may have against Defendant.

11. Except for the signatories to the Order and each of the Releasees named or referenced in Paragraph 6 above, nothing in this Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person for any liability such non-signatory or non-Releasee may have arising out of matters alleged in the Complaint. This Order shall be binding upon, inure to the benefit of and be enforceable by each Releasee named or referenced herein, whether or not a signatory to this Order.

12. Except with respect to the matters in Exhibit A, nothing in this Order shall relieve Defendant of its obligations to comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

13. Nothing herein shall restrict the right of Defendant to raise any administrative, legal, or equitable defense with respect to any further actions reserved by the State in this Order. However, with respect to the actions reserved by the State in this Section, Defendant shall not

assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. PERMANENT INJUNCTION

14. Except as provided in Paragraphs 15 and 16 below, Defendant is ordered and permanently enjoined to comply fully with R.C. Chapter 3704 and 3734 and the rules thereunder.

Air Pollution Control Injunctive Relief

15. Defendant is ordered and enjoined to conduct the following:

A. Sulfur Dioxide (SO₂)

- a. i. Defendant Sunny Farms reported a rate of 239 tons of SO₂ emissions per month from the Sunny Farms Landfill for the June 2019 reporting period. If, at any time before demonstrating compliance with the SO₂ interim emissions limit under Paragraph 15.A.d. below, the SO₂ emissions from the Sunny Farms Landfill exceed 248 tons per 30-day calendar month, Defendant Sunny Farms shall (1) investigate the cause of the additional SO₂ emissions, (2) evaluate via air dispersion modeling the impact of the new emission rate of SO₂ emissions on the air quality of off-site residential receptors in the vicinity of Sunny Farms Landfill, (3) determine if additional cost-effective actions in the short term can be taken to reduce the SO₂ emissions or the impact on the air quality referenced in Paragraph 15.A.a.i.(2), and (4) submit a plan to Ohio EPA within 15 days of reporting to Ohio EPA through the Monthly Report required by Paragraph 15.A.l. that the monthly SO₂ emissions exceeded 248 tons per 30-day calendar month. The plan shall address the investigation, determination, and implementation of any cost-effective actions. The investigation and implementation of the additional actions shall, at a minimum, consider the possible expansion of the Installed Fixed Bed Adsorption Process, more frequent change out of the absorption material in the Installed Fixed Bed Adsorption Process, the use of a more effective absorption material, and the possible increase in dispersion parameters from the flares.

- ii. Defendant Sunny Farms shall operate the Installed Fixed Bed Adsorption Process until such time as the Control Technology is ready to operate. Once the Control Technology is ready to operate, Defendant Sunny Farms shall operate either control system until the commissioning phase of the Control Technology is complete. Once the commissioning phase of the Control Technology is complete, the Control Technology shall be used except in the case of a malfunction where the Installed Fixed Bed Adsorption Process may be used as a backup.
 - iii. Prior to the Effective Date, Defendant Sunny Farms submitted a preliminary air dispersion modeling report to Ohio EPA that demonstrates no SO₂ concentrations exceeding SO₂ NAAQS at off-site residential receptors in the vicinity of the Sunny Farms Landfill. Defendant Sunny Farms shall submit updated preliminary air dispersion modeling reports with the Monthly Report required by Paragraph 15.A.1. until the SO₂ interim emission limit required under Paragraph 15.A.d. becomes applicable.
- b. By the Effective Date, Defendant Sunny Farms shall submit a proposed Interim Air Dispersion Modeling Protocol to Ohio EPA for conducting SO₂ air dispersion modeling. The Interim Air Dispersion Modeling Protocol shall describe the modeling that will be conducted in order to demonstrate that the emissions from the flares (flare 1 and flare 2 or from an alternative flare configuration) do not cause an exceedance of the SO₂ NAAQS in the Ambient Air.
- c. Within 60 days of Ohio EPA's approval of the Interim Air Dispersion Modeling Protocol, Defendant Sunny Farms shall submit an Interim Air Dispersion Modeling Report of SO₂ emissions from the flares (flare 1 and flare 2 or from an alternative flare configuration) and propose an interim emission limit for SO₂. The Interim Air Dispersion Modeling Report will describe how Defendant Sunny Farms plans to comply with the interim emission limit and how the proposed interim emission limit ensures compliance with the SO₂ NAAQS in the Ambient Air. The SO₂ interim emission limit must be consistent with the output of AERMOD as presented in the Interim Air Dispersion Modeling Report.
- d. Within 90 days of Ohio EPA's approval of the SO₂ interim emission limit and Interim Air Dispersion Modeling Report, Defendant Sunny Farms shall submit documentation to Ohio EPA demonstrating that the SO₂

interim emission limit has been achieved. Thereafter, Defendant Sunny Farms shall comply with the SO₂ interim emissions limit and submit documentation in the Monthly Report demonstrating compliance with the interim emission limit as specified in Appendix A.

- e. Within 45 day of the Effective Date, Defendant Sunny Farms shall submit for Ohio EPA's approval a Best Available Control Technology assessment (hereinafter referred to as "the BACT Report") for SO₂ that meets the information requirements of existing written Ohio EPA guidance for such assessments and provides for the destruction of at least 98 percent of the hydrogen sulfide (H₂S) emissions from the Collected Landfill Gas.
- f. Within 90 days of the Effective Date, Defendant Sunny Farms shall submit to Ohio EPA a Final Air Dispersion Modeling Protocol for the purpose of evaluating the emissions addressed by the Permit referenced in Paragraph 15.A.g. below.
- g. Within 30 days of Ohio EPA's approval of the BACT Report or the Final Air Dispersion Modeling Protocol submitted pursuant to Paragraph 15.A.e. and 15.A.f. above, whichever is later, Defendant Sunny Farms shall submit to Ohio EPA a permit application designed to modify Permit-to-Install (PTI) P011625, issued April 23, 2014. The permit application shall include: (1) the BACT Report and (2) the Final Air Dispersion Modeling Report. The permit application shall be based on Defendant Sunny Farms' post-Control Technology potential to emit and shall be in the form and contain such information requested by Ohio EPA as the permitting authority. Ohio EPA will review the application and take appropriate permitting action pursuant to the relevant laws, rules, and regulatory guidance.
- h. Within 550 days of the Effective Date of the Permit, Defendant Sunny Farms shall commence operation of the Control Technology as approved by Ohio EPA through its issuance of the Permit.
- i. Within 90 days of commencing operation of the Control Technology, Defendant Sunny Farms shall conduct an emissions test for H₂S from the Control Technology. Within 180 days of commencing operation of the Control Technology, Defendant Sunny Farms shall demonstrate compliance with the Control Technology and SO₂ emissions limits as required in the Permit.

- j. By the Effective Date, Defendant Sunny Farms shall provide actual boundaries of the Sunny Farm Landfill to Ohio EPA for purposes of siting a monitor and provide written notice to Ohio EPA if the boundaries change within 15 days of any change. Within 30 days of written notice from Ohio EPA, Defendant Sunny Farms shall pay or reimburse Ohio EPA for the actual reasonable costs of the following measures to be conducted by Ohio EPA:
 - 1. Identify a single, appropriate SO₂ ambient monitoring site for one SO₂ monitor at a location outside of the property boundary of Sunny Farms Landfill;
 - 2. Obtain the authority from the site landowner to use the site;
 - 3. Complete the installation of the SO₂ monitor at the site so that it is ready for use, including, at a minimum, the installation of a base, the shelter/trailer, power drop, adequate parking, and security fencing, all meeting Ohio EPA minimum standards; and
 - 4. Procurement of required equipment and material necessary to complete items in subparagraphs 1-3 above.

- k. Defendant Sunny Farms' payment or reimbursement obligation in Paragraph 15.A.j. shall extend only to 1,100 days following the Effective Date and shall not exceed \$18,000 for the SO₂ monitor, \$20,000 for the environmentally-controlled monitoring trailer, \$10,000 for the electrical contractor and the power drop, and \$1,000 per month for monthly charges (including but not limited to rent, electric, and labor). Defendant Sunny Farms shall have no obligation to operate, maintain, or remove the SO₂ monitor and installation site. Ohio EPA will publish the electronic data real time on the Ohio EPA website for public availability and review.

- l. Defendant Sunny Farms shall submit a Monthly Report to Ohio EPA that contains emissions data identified and the status of each condition provided in Paragraph 15.A.a. through Paragraph 15.A.h. After Defendant Sunny Farms demonstrates compliance with the Control Technology and SO₂ emissions limit as required in Paragraph 15.A.i. above for three consecutive months, Defendant Sunny Farms may submit a written request to Ohio EPA to reduce the frequency of reporting for such requirement(s) to quarterly

consistent with the deadlines for quarterly reports set forth in Sunny Farms Landfill Title V Permit No. P0117316.

B. Hydrogen Sulfide (H₂S)

- a. Within 60 days of the Effective Date, Defendant Sunny Farms shall sample and analyze H₂S in the Collected Landfill Gas using continuous emissions monitoring system(s) that are (i) capable of completing one cycle of operation (sampling, analyzing, and data recording) at a minimum of 15-minute intervals and (ii) meet the performance requirements set forth in 40 CFR Part 60, Appendix B, Performance Specification 7. With the continuous emissions monitoring system(s), Defendant Sunny Farms shall sample and analyze the total raw gas at an inlet before the Installed Fix Bed Adsorption System and sample and analyze the H₂S at the inlet to each operating flare. Defendant Sunny Farms shall comply with the H₂S sampling and analysis protocol in this Paragraph until the Effective Date of the Permit. H₂S sampling data shall be used in the calculation specified in Appendix A to demonstrate compliance with the SO₂ interim emissions limitation.
- b. Within 30 days of the Effective Date, Defendant Sunny Farms shall remodel H₂S emissions using the most recently reported flow and H₂S concentrations to demonstrate that the flare stack emissions will not exceed Ohio's Maximum Acceptable Ground Level Concentration (MAGLC) for H₂S. The air dispersion modeling shall include H₂S emissions from the flares (flare 1 and flare 2 or from an alternate flare configuration). The procedure for modeling to demonstrate that the MAGLC for H₂S has not been exceeded will be that required by PTI 0116255.
- c. Within 60 days of the Effective Date, Defendant Sunny Farms shall submit a complete report of the modeling performed according to Paragraph 15.B.b above.

Solid Waste Injunctive Relief

16. Defendant is ordered and enjoined to conduct the following:

As used throughout this Paragraph, an H₂S concentration over 15 ppb is a trigger level that may require an additional response in accordance with this Consent Order. A single offsite exceedance of H₂S of 15 ppb or less, in and of itself, is not considered a violation of Ohio Adm.Code 3745-27-19(B)(3) or this Order.

- A. From the Effective Date, Sunny Farms shall maintain permanent Jerome meters at

the three locations approved by Ohio EPA. The Jerome meters shall be calibrated and maintained in accordance with manufacturer's specifications. The Jerome meters shall be programmed so that they record H₂S readings every 10 minutes 24 hours a day 7 days a week. By September 1, 2019, Sunny Farms shall provide Ohio EPA and the Health Department access to electronic real-time data and all historical data.

- i. From the Effective Date, Sunny Farms shall submit to Ohio EPA and the Health Department a monthly report (by the 5th business day of the month for the prior month) that provides, at a minimum, the date, time, location, and amount of H₂S detected for each reading.
 - ii. After three consecutive months of H₂S readings below 15 ppb from the permanent meters, Defendant may submit a written request to Ohio EPA to reduce the frequency of submittals to quarterly. If the request is approved and readings later exceed 15 ppb thereafter, Ohio EPA may require, in writing, that Sunny Farms return to a monthly report, and Sunny Farms must accordingly return to a monthly report.
 - iii. If after one year of H₂S readings below 15 ppb, Sunny Farms may submit a request to Ohio EPA for suspension or termination of the use of the Jerome meters.
 - iv. Where there is a malfunction or error from the Jerome meters or other factors that may lead to anomalous H₂S readings, Sunny Farms may make a description of such malfunction, error or other factor to Ohio EPA and the Health Department and request that such reading not be included for consideration in a request to reduce the frequency of reporting or in suspension or termination of the Jerome meters.
- B. From the Effective Date, Sunny Farms shall limit the size of the working faces at the Facility to the requirements specified in Ohio Adm.Code 3745-27-19, but the cumulative area of the working faces shall not exceed an area of three and one-half (3.5) acres.
- C. From the Effective Date, Sunny Farms shall only use soil as daily cover, unless otherwise authorized by Ohio EPA in writing.
- D. From the Effective Date, Sunny Farms shall continue to place and maintain intermediate cover in all areas of the Facility for which a final cap has not been constructed or is in the process of being constructed in accordance with Ohio Adm.Code 3745-27-19(G), except that the intermediate cover shall be at least twenty-four (24) inches thick. Sunny Farms is not required to place intermediate cover in the areas where a geomembrane is used as an odor control blanket. Sunny Farms shall submit a quarterly report, including a map and supporting documentation, verifying compliance with this requirement by using data from

Defendant's laser control/GPS elevation system at the Facility or other survey or detection methods to verify compliance.

- E. From the Effective Date, Sunny Farms shall, by the 20th day of each month, submit to Ohio EPA and the Health Department a written report that includes the information specified in Sunny Farms' July 19, 2019 Gas Collection and Control System Monthly Operations Report including concentrations of H₂S from the raw gas.
- F. By November 1st each year, Sunny Farms shall submit to Ohio EPA and the Health Department for review and concurrence a written evaluation report of the entire gas extraction system to determine whether:
 - i. the existing gas extraction/management system is operating effectively to control odors;
 - ii. additional gas extraction infrastructure is required; and
 - iii. the current flare system can handle the necessary volume of gas to control odors.

If the evaluation reveals that the gas extraction system is not sized properly, then not later than 30 days after submission of the written evaluation report, Sunny Farms shall submit to Ohio EPA a plan to revise the gas extraction system to ensure that the system is sized properly. Upon Ohio EPA's concurrence, Sunny Farms shall implement the revised plan in accordance with a schedule to be agreed upon by Sunny Farms and Ohio EPA.

- G. By January 1st and July 1st each year, Sunny Farms shall report the concentration of carbon monoxide (ASTM D1946) at the five hottest gas wells that exceed 131 degrees Fahrenheit (131° F) at the Facility and submit the monitoring results to Ohio EPA and the Health Department.
- H. From the Effective Date, Sunny Farms shall perform monthly surface emission monitoring of all areas at the Facility where waste is disposed and where the final cap or Odor Control Blanket has not been constructed, including edges of the final cap and Odor Control Blanket. Sunny Farms is not required to conduct monthly surface emission monitoring at the working face, haul roads or on the final cap or Odor Control Blanket.
 - i. Sunny Farms shall conduct surface emission monitoring for methane pursuant to 40 C.F.R. 60.755 (c), with the following exceptions:
 - a. The exceedance methane concentration threshold shall be 100 parts per million (ppm) rather than 500 ppm;

- b. The serpentine pattern shall be conducted at approximate 50-foot spacing rather than a 100-foot spacing; and,
 - c. Jerome meter readings for H₂S shall be taken on the surface of the Facility at all locations with methane reading above 100 ppm.
- ii. Sunny Farms shall notify Ohio EPA and the Health Department not less than 24 hours before conducting surface emission monitoring.
- iii. If Sunny Farms is unable to safely conduct surface emission monitoring in an area due to potentially dangerous conditions (such as snow or ice cover or overly saturated soil conditions), Sunny Farms may request Ohio EPA's approval to exclude such area from the monitoring pattern during the period that such potentially dangerous conditions exist.
- iv. If there is an exceedance of methane above 100 ppm, Sunny Farms shall submit to Ohio EPA the results on a plan drawing showing the approximate location of each detection above 100 ppm.
- v. If any exceedance of methane above 100 ppm occurs, Sunny Farms shall complete corrective actions within the timeframes prescribed within 40 C.F.R. 60.755 (c) with the following modifications:
 - a. Not later than 72 hours after detecting the exceedance of methane above 100 ppm, perform cover maintenance, adjust the vacuum of the adjacent wells to increase gas collection in the vicinity of each exceedance or take other corrective action and the location shall be re-monitored.
 - b. If the re-monitoring of the location shows a second exceedance of methane above 100 ppm, additional corrective action (i.e. re-adjust the vacuum, perform additional cover maintenance, etc.) shall be taken and the location shall be monitored again not later than 72 hours after the second exceedance.
 - c. If re-monitoring shows a third exceedance of methane above 100 ppm for the same location, Sunny Farms shall not later than 72 hours after the third exceedance, identify and delineate the portion of the Facility in which the exceedances are located. Not later than 45 days after the identification and delineation, Sunny Farms shall do at least one of the following:
 - 1. Install an additional 12-inches of intermediate cover in the portion of the Facility in which the exceedances are located that covers the delineated area and that extends 50 feet beyond the delineated area in each direction;

2. Install a new well or other collection device;
 3. Install a geomembrane liner or other type of odor control blanket that covers the delineated area and that extends 50 feet beyond the delineated area in each direction, in accordance with the specifications in Sunny Farms' current permit, or alternate specifications authorized by Ohio EPA in writing; or
 4. Sunny Farms may request an alternative remedy, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation by submitting a written request to Ohio EPA for written concurrence. Upon written concurrence from Ohio EPA, Sunny Farms shall implement the alternative remedy and corresponding timeline in accordance with the concurrence.
- vi. If there has not been an exceedance of methane above 100 ppm for a period of 3 consecutive months, Sunny Farms may request from Ohio EPA, in writing, to change the exceedance methane concentration threshold, or to reduce the frequency of such surface emission monitoring to quarterly. If the request is approved, and a change in circumstances occurs and there are H₂S levels that exceed 15 ppb detected off-site, Ohio EPA may require, in writing, that Sunny Farms return to the original monthly schedule or threshold specified above.
- I. From the Effective Date, Sunny Farms shall continue to implement a self-monitoring odor system at the Facility. The self-monitoring odor system shall include, but not be limited to, the following:
- i. The odor monitoring must be conducted two times daily, seven days a week, at dawn (5:00 am to 8:00 am), and at dusk (5:00 pm to 11:00 pm). Readings shall be taken with a Jerome meter at the monitoring locations identified in the Daily H₂S Monitoring Standard Operating Procedure, as amended April 1, 2019 or future amendments agreed to by Ohio EPA. If an initial reading at a location is less than 15 ppb H₂S, no additional readings must be taken. If an initial reading at a location exceeds 15 ppb, Sunny Farms may take two additional readings, at subsequent intervals when the previous reading is purged (not to exceed 3 minutes per interval) and record the average of the three readings.
 - ii. If no readings from Sunny Farms' self-monitoring odor system exceed 15 ppb (or an average of 15 ppb if three readings are taken) for a period of three consecutive months, Sunny Farms may request from Ohio EPA, in writing, to reduce the frequency of odor monitoring to two times per

day, five days a week during normal operating hours. If the request is approved, but then the H₂S readings exceed 15 ppb thereafter, Ohio EPA may require, in writing, that Sunny Farms return to two times daily, seven days a week, as described above, and Sunny Farms shall accordingly return to daily self-monitoring for odors.

- iii. Sunny Farms shall use a calibrated Jerome meter model capable of accurately measuring H₂S at 5 ppb for readings at the time of each monitoring event.
- iv. Sunny Farms shall maintain, calibrate, and operate the Jerome meter in accordance with the manufacturer's specifications. Sunny Farms must create monitoring records that at a minimum include the date, time, and location of odor monitoring and calibration records and submit records to Ohio EPA and the Health Department monthly, by the 5th business day of the following month. Sunny Farms shall notify Ohio EPA and the Health Department within 24 hours if an average of three readings is 15 ppb H₂S or above.

J. From the Effective Date, Sunny Farms shall maintain its Continuous Meteorological ("MET") Station. Sunny Farms shall ensure that the MET station does the following: (1) accurately measures temperature, wind speed, wind direction, and barometric pressure on a continuous basis; (2) records wind direction in one-degree increments; (3) has a data recording device capable of recording each reading; (4) records measurements every 10 minutes; and (5) generates hourly average data for all parameters. Sunny Farms shall provide real-time and all historical data to Ohio EPA and the Health Department electronically through a website.

K. From the Effective Date, Sunny Farms shall continue to maintain a 24-hour a day, 7 days per week odor complaint telephone hotline that is operated by a third-party. Sunny Farms shall ensure the following:

- i. Upon receipt of any odor complaint, the third-party requests and, if provided, records information including, but not limited to, the date and time, complainant's name, location of the odor, and description and nature of the odor, and notifies Sunny Farms, the Health Department, and Ohio EPA by electronic mail promptly upon receipt of each odor complaint; and
- ii. At the end of each month, the third-party provides a report to Sunny Farms, the Health Department, and Ohio EPA that compiles all complaints received during the month period. The report must be submitted electronically to email addresses provided to Sunny Farms from the Health Department and Ohio EPA.

- L. From the Effective Date, Sunny Farms shall investigate all complaints received to the extent possible. Sunny Farms shall submit to Ohio EPA an odor complaint form that documents Sunny Farms' actions taken to investigate and address each odor complaint, including any response actions taken to abate odors. Sunny Farms shall include the form in its odor complaint log and maintain the log at the Facility. Sunny Farms shall make the log available to Ohio EPA and the Health Department upon request.
- M. Within 30 days after collecting 3 off-site detections which exceed 15 ppb H₂S using a Jerome meter sampled by Sunny Farms, Ohio EPA or the Health Department within a calendar month, Sunny Farms shall re-assess all potential sources of odors at the Facility, including the flare configuration system and its operating parameters, and submit a report to Ohio EPA. The report shall also include a corrective measures plan that evaluates all practicable remediation measures, including modification of the H₂S remediation system if necessary, that are available to strictly control odors such that the Facility does not cause a nuisance or health hazard. Ohio EPA may require the evaluation of additional remediation measures.
- N. From the Effective Date, Sunny Farms shall maintain backup power sources for the landfill's gas extraction system to ensure continuous operation in the event of a power failure.
- O. From the Effective Date, Sunny Farms shall maintain a community outreach program, including a website, to notify the community as soon as practicable of any facility malfunction, power outage, or event that may cause the migration of odors beyond the Facility property. The odor hotline phone number shall be prominently included on Sunny Farms' website. Sunny Farms shall periodically, but at a minimum quarterly, update government officials and the community on actions taken by Sunny Farms to address such offsite odors.
- P. From the Effective Date, Sunny Farms shall notify Ohio EPA and the Health Department immediately upon discovery of any facility malfunction, power outage, or event that may cause the migration of nuisance odors beyond the landfill property.
- Q. From the Effective Date, Sunny Farms shall remove, at least once daily or more often if needed, mud, debris, and dirt, dragged onto Township Road 108 from Sunny Farms' vehicles, if any.
- R. By September 30, 2019, Sunny Farms shall submit to Ohio EPA, an alteration request to Permit #676460, as approved February 8, 2013, that specifies the following:
 - i. All vertical gas wells will be installed in landfill areas that are not at final grade (i.e. which would need to be raised) will be installed as

caisson wells;

- ii. Criteria specifying in future submittals when caisson wells, lateral or other wells will be installed in future phases;
 - iii. Criteria specifying that when caisson wells are vertically lifted, vacuum to the wells is re-established the same day and routed to the facility's landfill gas control system;
 - iv. Criteria specifying that during gas well drilling, collars with vacuum be utilized, and gas collected will be routed to the facility's landfill gas collection system;
 - v. Criteria specifying that vacuum be available with the necessary header lines in place in proximity to newly drilled gas wells such that vacuum can be applied to the well the same day it is installed;
 - vi. Criteria specifying that vacuum will be applied to each cell's leachate collection system when the waste depth in the cell reached 25 feet deep;
 - vii. Standard operating procedures for the operator to inspect and close down the facility each day to ensure there will be no overnight sources of H₂S and other landfill gas leaving the facility; and,
 - viii. Establishment of controls to minimize water contact with waste while ensuring the dust control system adequately controls dust emissions.
- S. By August 1, 2019, Sunny Farms shall maintain a litter fence to keep litter out of the pond east of the rail unloading building.
- T. By August 1, 2019, Sunny Farms shall ensure an emergency contact is available to Ohio EPA 24 hours a day, 7 days a week, to call in case of emergency. Sunny Farms shall ensure that Ohio EPA receives updated contact information each time the designated personnel are replaced.
- U. By September 1, 2019, Sunny Farms shall use a certified scale located at the Facility that is designed to allow all rail cars hauling waste received at the Facility to be accurately weighed and recorded, in accordance with Ohio Adm.Code 3745-27-19. The scale shall meet the specifications, tolerances, and regulatory requirements of R.C. Chapter 1327, and shall be inspected, tested, and approved in accordance with Ohio law.
- V. On Tuesdays from the Effective Date, Sunny Farms shall submit the daily log forms for the previous calendar work week to Ohio EPA and to the Health Department in the form of EXCEL spreadsheets or another agreed upon electronic format. In the event a Tuesday falls on a holiday, Defendant shall submit the

daily log forms for that previous workweek to Ohio EPA and the Health Department on the Wednesday following the Tuesday holiday.

- W. By September 1, 2019, Sunny Farms shall perform high definition video recordings of the unloading process for all rail cars. Sunny Farms shall provide access to the videos via internet to Ohio EPA and the Health Department upon request. Screenshot photos from the video recordings may also be provided to Ohio EPA and the Health Department upon request. Sunny Farms shall retain the video recordings for a minimum period of 90 days. Sunny Farms may implement alternate procedures for viewing the rail car unloading process upon written concurrence from Ohio EPA.

VI. CIVIL PENALTY

17. Under R.C. 3704.06 and 3734.13, Defendant is ordered to pay a civil penalty of \$1,700,000, subject to the provisions in this Order:

A. Ohio EPA agrees that \$600,000 of the civil penalty will be placed in a trust, entitled "The Fostoria, Ohio Community Trust" solely for the purpose of improving public health and wellness in and around the Fostoria, Ohio community and/or for the protection, conservation, preservation, and enhancement of the air, water, public lands and natural resources in and around Fostoria, Ohio. To accomplish this, Defendant shall do all of the following:

- a. Within 30 days of the Effective Date of this Order, deposit \$600,000 in an escrow account with an independent financial institution and submit a proposed trust agreement/plan that designates an independent third-party trustee(s) for approval by the Director of Ohio EPA.
- b. Within 60 days, establish the trust pursuant to the approved agreement/plan.

B. Defendant shall deliver, within 60 days of the date of the Effective Date of this Order, a cashier's or certified check in the amount of \$400,000 drawn on an

account with sufficient funds made payable to “Treasurer, State of Ohio” delivered to Sandra Finan, or her successor, Paralegal, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. “Ohio EPA – Division of Air Pollution Control” shall appear on the face of the check. The Ohio Attorney General’s Office may notify Defendant of any late payment.

C. Defendant shall deliver, within 60 days of the date of the Effective Date of this Order, a second cashier’s or certified check in the amount of \$100,000 drawn on an account with sufficient funds made payable to “Treasurer, State of Ohio” delivered to Sandra Finan, or her successor, Paralegal, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. “Ohio EPA – Division of Materials and Waste Management” shall appear on the face of the check. The check shall be deposited in the Environmental Protection Remediation Fund pursuant to R.C. 3734.281. The Ohio Attorney General’s Office may notify Defendant of any late payment.

D. Defendant shall deliver, within 60 days of the date of the Effective Date of this Order, a third cashier’s or certified check in the amount of \$600,000 drawn on an account with sufficient funds made payable to “Treasurer, State of Ohio” delivered to Sandra Finan, or her successor, Paralegal, Ohio Attorney General’s Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. “Ohio EPA – Division of Materials and Waste Management – Fee civil penalty” shall appear on the face of the check. The check shall be deposited in the Environmental Protection Remediation Fund

pursuant to R.C. 3734.281. The Ohio Attorney General's Office may notify Defendant of any late payment.

18. If full payment of the civil penalty and any other amount due under this Consent Order is not received by the State in accordance with the terms of this Consent Order, the remaining unpaid balance of the total civil penalty and any other amount due, plus applicable interest under R.C. 131.02(D), shall become immediately due and owing. The remaining unpaid balance and delinquent payments shall accrue interest at the rate per annum required by R.C. 5703.47 calculated from the Effective Date of this Order.

19. If any amount is not paid in accordance with the terms of this Consent Order, the Attorney General may collect that amount under R.C. 131.02. Pursuant to R.C. 109.081, in addition to the outstanding balance due under this Consent Order, collection costs of ten percent shall be owing and fully recoverable from the Defendant to be paid into the State Treasury to the credit of the Attorney General Claims Fund.

20. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest and collection costs, if the full civil penalty payment is not paid according to the schedule in this Order. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than the full civil penalty as specified in this Order.

21. If Defendant files a petition for bankruptcy, the State of Ohio reserves the right to file a certificate of judgment lien against any person for the remaining unpaid balance of the total civil penalty, plus applicable statutory interest.

22. Compliance with Paragraph 17 above shall be a full accord and satisfaction of the Plaintiff's civil penalty and administrative penalty claims against Defendant for the violations and claims alleged in Plaintiff's Complaint (except Counts Seven and Eight), the Director's Interim Findings and Orders issued January 31, 2019 and this Order, including but not limited to the items addressed in Exhibit A.

VII. STIPULATED PENALTIES

23. If Defendant fails to comply with any of the requirements of this Order, with the exception of Paragraph 14, Defendant shall immediately and automatically be liable for and shall pay stipulated penalties under the following schedule for each failure to comply:

- A. Defendant shall pay three hundred dollars (\$300.00) per day for each day any requirement of this Order is violated up to the first thirty (30) days of violation;
- B. For each day any requirement of this Order is violated between thirty (30) days and ninety (90) days of violation, Defendant shall pay six hundred dollars (\$600.00) per day;
- C. For each day any requirement of this Order is violated greater than (90) days of violation, Defendant shall pay one thousand dollars (\$1,000.00) per day.

24. Stipulated penalties due under this Order shall be immediately due and owing without demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and delivered to Sandra Finan, Paralegal, or her successor, at the Office of the Ohio Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

25. Defendant's payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3704, including civil penalties under R.C. 3704.06; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was

paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws.

26. Further, payment of stipulated penalties by Defendant shall not be an admission of liability by Defendant.

VIII. UNPAID FEES

27. On August 2, 2018, Defendant Sunny Farms and non-parties, Tunnel Hill Reclamation, LLC, and Tunnel Hill Partners, LP, voluntarily disclosed to Plaintiff that Defendant and Tunnel Hill Reclamation, LLC, had underreported the receipt of solid waste and construction and demolition debris entering their facilities located at 12500 West County Road 18, Fostoria, Seneca County, Ohio 44830, and 8822 Tunnel Hill Road, New Lexington, Perry County, Ohio 43764 from 2013 to 2018. In failing to report all tons entering the Facilities, Defendant and Tunnel Hill Reclamation, LLC, failed to pay fees applicable to such underreported tons.

28. Beginning in 2017 and continuing to present, Plaintiff and Defendant have been in administrative dispute resolution discussions pursuant to the Dispute Resolution Section of the July 24, 2008 Consent Order and Judgment Entry entered in the *State of Ohio ex .rel. Rogers v. Sunny Farms Landfill LLC, et.al.*, Case No. 07-CV-0694. The discussions have concerned the characterization of the waste in specific rail cars being delivered to the facility.

29. To resolve the Plaintiff's claims regarding the matters set forth above, Defendant is ordered to pay Plaintiff \$2,011,426 for fees. Full payment shall be made within 60 days of entering this Order. Such payment shall be made by delivering to Sandra Finan, Paralegal, or her successor, Office of the Ohio Attorney General, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215, a certified check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

30. The payment above constitutes only the fees owed to the State of Ohio and does not include or reflect fees owed or paid to any other parties.

IX. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

31. Performance of the terms of this Order by Defendant is not conditioned on the receipt of any private, Federal or State grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, Federal or State grants, loans and/or funds or by the processing of any applications for the same.

X. FACILITY ACCESS

32. As of the Effective Date, the Ohio EPA and its representatives and contractors shall have access at reasonable times to the Facility, and shall have access to any other property controlled by or available to Defendant to which access is necessary to effectuate the actions required by this Order. Access shall be allowed for the purposes of conducting activities related to this Order including but not limited to:

- A. Monitoring the work or any other activities taking place at the Facility;
- B. Verifying any data or information submitted to Ohio EPA;
- C. Conducting investigations relating to contamination at or near the Facility;
- D. Obtaining samples;
- E. Assessing the need for, planning, or implementing additional response actions at or near the Facility;
- F. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Defendant or its agents, consistent with this Order and applicable law; or
- G. Assessing Defendant's compliance with this Order.

33. Nothing in this Order shall be construed to limit the statutory authority of the Director or his authorized representatives to enter at reasonable times upon the Facility or any other private

or public property, real or personal, to inspect or investigate, obtain samples and examine or copy any records to determine compliance with R.C. Chapter 3704.

XI. SUBMITTAL OF DOCUMENTS

34. All documents required to be submitted to Ohio EPA pursuant to this Order shall be submitted to the following addresses, or to such addresses as Ohio EPA may hereafter designate in writing:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn:

or

Ohio EPA
Northwest District Office
Division of Materials and Waste Management
347 North Dunbridge Road
Bowling Green Ohio 43402
Attn: Mike Reiser

XII. EFFECT OF ORDER

35. This Order does not constitute authorization or approval of the construction, installation, modification, or operation of any air contaminant source, source operation, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that emits or may emit any air pollutant or air contaminant not previously approved by Ohio EPA, under the Clean Air Act, or by a permitting authority or its delegates. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

XIII. MODIFICATION

36. No modification shall be made to this Order without the written agreement of the Parties or without leave of the Court.

XIV. POTENTIAL FORCE MAJEURE

37. In the event that Defendant's performance of its obligations under this Order is or may be delayed due to factors beyond Defendant's reasonable control (including events such as adverse weather conditions, etc.), Defendant shall promptly notify Ohio EPA in writing. If Defendant demonstrates to the satisfaction of Ohio EPA that its performance of an obligation under this Order will be delayed due to factors beyond Defendant's reasonable control, the deadline for Defendant's performance of that obligation shall be extended for the time necessary to account for such delay, as determined by Ohio EPA based upon the facts and circumstances. Increased cost of compliance, among other circumstances, shall not be considered an event beyond the reasonable control of Defendant for purposes of this Order. Such deadline extensions by Ohio EPA under this Order shall not require modification of the terms of this Order or the approval of the Court.

XV. MISCELLANEOUS

38. Except with respect to the matters in Exhibit A, nothing in this Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

39. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Order shall not relieve Defendant from the obligations created by this Order.

40. Defendant shall inform Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XVI. RETENTION OF JURISDICTION

41. This Court shall retain jurisdiction for the purpose of administering and enforcing this Order.

XVII. ENTRY OF ORDER AND FINAL JUDGMENT BY CLERK

42. Under Rule 58 of the Ohio Rules of Civil Procedure, upon signing this Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all Parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Order.

XVIII. EFFECTIVE DATE

43. This Order shall be effective upon the date of its entry by the Court.

XIX. COURT COSTS

44. Defendant is ordered to pay all court costs of this action.

XX. AUTHORITY TO ENTER INTO THE ORDER

45. Each signatory represents and warrants he or she has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document. By signing this Order, each signatory waives all rights of service of process for the underlying Complaint.

IT IS SO ORDERED.

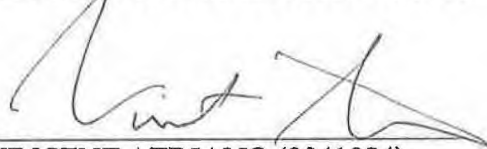


JUDGE



DATE

APPROVED AND AGREED TO BY:



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EXHIBIT A

All past, present or future disagreements, disputes and actual or potential claims, suits, actions, causes of action, assessments, demands, debts, damages, judgments, liabilities and obligations of any kind whatsoever, upon any legal or equitable theory, whether contractual, statutory, regulatory in nature or based upon any common law, local rule or authority or otherwise, concerning:

1. 1.16.18 Letter from Andrew Drumm (Ohio EPA) to James Lyon (Sunny Farms Landfill)
2. 3.12.2018 Waste Characterization Letter from Michael Reiser (Ohio EPA) to James Lyon (Sunny Farms Landfill)
3. 4.12.2018 Waste Characterization Letter from Michael Reiser (Ohio EPA) to James Lyon (Sunny Farms Landfill)
4. 5.9.18 Waste Characterization Letter from Michael Reiser (Ohio EPA) to James Lyon (Sunny Farms Landfill)
5. 12.20.18 Letter from Andrew Drumm (Ohio EPA) to Dave Seegert (Sunny Farms Landfill)
6. 12.20.18 Letter from Tyler Madeker (Ohio EPA) to James Lyon (Sunny Farms Landfill) NOD
7. 12.31.18 Letter from Tyler Madeker (Ohio EPA) to James Lyon (Sunny Farms Landfill)
8. 1.4.19 Letter from Tyler Madeker (Ohio EPA) to James Lyon (Sunny Farms Landfill)
9. 1.17.19 Letter from Andrew Drumm (Ohio EPA) to James Lyon (Sunny Farms Landfill)
10. 1.24.19 Letter from Matt Beckman (Seneca County General Health District) to James Lyon (Sunny Farms Landfill)
11. 1.25.19 Letter from Tyler Madeker (Ohio EPA) to James Lyon (Sunny Farms Landfill)
12. 1.30.19 Letter from Tyler Madeker (Ohio EPA) to James Lyon (Sunny Farms Landfill)
13. 2.6.19 Letter from Matt Beckman (Seneca County General Health District) to James Lyon (Sunny Farms Landfill)
14. 2.8.19 Letter from Tyler Madeker (Ohio EPA) to James Lyon (Sunny Farms Landfill)
15. 2.21.19 Letter from Tom Poffenbarger (Ohio EPA) to James Lyon (Sunny Farms Landfill)
16. 3.5.19 Letter from Tyler Madeker (Ohio EPA) to Dave Seegert (Sunny Farms Landfill)

17. 3.5.19 Letter from Michael Reiser (Ohio EPA) to Dave Seegert (Sunny Farms Landfill) NOV/ROV
18. 3.19.19 Letter from Andrew Drumm (Ohio EPA) to Dave Seegert (Sunny Farms Landfill) NOD
19. 3.22.19 Letter from Morgan Johnson (Ohio EPA) to Ed Brdicka (Sunny Farms Landfill)
20. 3.27.19 Letter from Tyler Madeker (Ohio EPA) to Dave Seegert (Sunny Farms Landfill) NOD
21. 4.11.19 Letter from Andrew Drumm (Ohio EPA) to Dave Seegert (Sunny Farms Landfill) NOD
22. 4.15.19 Letter from Tyler Madeker (Ohio EPA) to Dave Seegert (Sunny Farms Landfill)
23. 4.29.19 Letter from Morgan Johnson (Ohio EPA) to Ed Brdicka (Sunny Farms Landfill)
24. 6.14.19 Letter from Andrew Drumm (Ohio EPA) to Dave Seegert (Sunny Farms Landfill) NOD
25. The sulfur dioxide (SO₂) emissions limits in Sunny Farms Landfill Title V Permit No. P0117316 given the Consent Order sets forth requirements including preliminary SO₂ requirements under Paragraphs 15.A.a. through 15.A.c., the interim SO₂ emissions limit under Paragraph 15.A.d., the Control Technology and modeling requirements under Paragraphs 15.A.e. through Paragraph 15.A.h., and the SO₂ emissions limits under the new Permit issued as contemplated in Paragraph 15.A.i
26. The January 31, 2019 Director's Interim Findings and Orders
27. All matters related to the characterization, weighing, and/or reporting of any underreported waste, construction and demolition debris or other materials received at Sunny Farms Landfill or Tunnel Hill Reclamation Landfill voluntarily disclosed to Ohio EPA prior to the Effective Date, including but not limited to any fees relating thereto, including the disclosures in the 8.2.18 Voluntary Disclosure letter from Vince Atriano to Todd Anderson and the 7.24.19 Voluntary Disclosure email from Vince Atriano to Sarah Bloom Anderson.
28. All matters under the July 24, 2008 Consent Order and Judgment Entry entered in *State of Ohio ex rel. Rogers v. Sunny Farms Landfill LLC, et al.*, Case. No. 07-CV-0694 and the characterization or reporting of waste or construction and demolition debris and other materials received at Sunny Farms Landfill prior to the Effective Date thereunder.

APPENDIX A

Demonstrating Compliance with the SO₂ Interim Emissions Limitation

- A. Sunny Farms Landfill shall demonstrate compliance with the interim emissions limitation established pursuant to Paragraph 15.A.c. and 15.A.d. of this Consent Order by:
1. measuring the Collected Landfill Gas flow rates as specified in Section C.3.d)(7)a. of the Sunny Farms Landfill Title V Permit No. P0117316;
 2. performing sampling and analysis of the Collected Landfill Gas as specified in Paragraph 15.B.a. of this Consent Order; and
 3. calculating sulfur dioxide (SO₂) emissions as specified in Section C.3.d)(7)c. of the Sunny Farms Landfill Title V Permit No. P0117316.
- B. Compliance with the SO₂ interim emissions limit will be demonstrated on a calendar-day basis.
- C. Compliance documentation for the SO₂ interim emissions limit will be reported to Ohio EPA in the Monthly Report as required in Paragraph 15.A.1. of this Consent Order.

Exhibit 2

Sunny Farms' Annual Operating License Application (Sept. 27, 2022)

Facility License Service

To manage your facility applications and licenses click the facility name.

Add Facility

Back to Service Home

Remove

Sunny Farms Landfill LLC (37706)

New License Applications

Create New License Application

Type	Status	Date	Action
Municipal Solid Waste Landfill (14510)	Submitted	Sep 27, 2022	Actions ▾

Existing Licenses

Type	Year	Status	Expiration Date	Action
Municipal Solid Waste Landfill(12551)	2022	Expired	Dec 31, 2022	Actions ▾
Municipal Solid Waste Landfill(10430)	2021	Expired	Dec 31, 2021	Actions ▾
Municipal Solid Waste Landfill(8842)	2020	Expired	Dec 31, 2020	Actions ▾
Municipal Solid Waste Landfill(7812)	2019	Expired	Dec 31, 2019	Actions ▾
Municipal Solid Waste Landfill(6426)	2018	Expired	Dec 31, 2018	Actions ▾



eBusiness Center

[Print](#)

Facility License Application

Application Type

RENEWAL**Application Type**

Renewal

Transaction ID

1872958

Facility Type

Municipal Solid Waste Landfill

**Secondary ID**

MSWL018786

Facility Operations Changes Check here if there are any significant changes in facility operations.

None

Applicant Information

In accordance with the applicable provisions of the Ohio Administrative Code, the applicant for a facility license must be either the facility owner or operator. The applicant may be either a person or an organization. Please enter the appropriate applicant information in the spaces below.

Applicant Name

Sunny Farms Landfill LLC

Mailing Address Line 1

12500 West County Road 18

Mailing Address Line 2**Country**

USA

State

OH

City

Fostoria

Zip

44830

Email Address

bezyk@win-waste.com

Phone Number

(734) 260-5372

Applicant Type 

Property Owner and Facility Operator

Ohio EPA will provide the issued license (when we are the licensing authority) electronically via email to the applicant. If you would like additional individuals to receive a copy of the license certificate, please enter their email addresses below.

Please Note: Health Depts may choose to send license certificates either electronically or via hard copy mail, based on their specific organization protocols.

bbashore@win-waste.com

Facility Information

(ID: 37706)

The details listed below represent the most recent license application information submitted to Ohio EPA for this facility. Please review this information for accuracy before submitting your application.

If you wish to change any of the listed facility information please contact the Ohio EPA.

Facility Address

Sunny Farms Landfill LLC
12500 W Co Rd 18
Fostoria, OH 44830

Phone Number

(419) 436-0505 (edit)

County

Seneca County

Ohio EPA District Office

Northwest District Office

Facility License Authority

Seneca County General Health District

Note: If you do not know your local health department, you can look it up online at (health district lookup) and then enter your address. Alternately, you may call the Ohio Department of Health at 614-466-3543.

Use the map on the right to set the latitude and longitude values and verify they are correct. You may click on the map to choose latitude and longitude coordinates or enter the latitude and longitude values in the input fields below. Alternately, you may enter an address in the input field at the bottom of the map to find coordinates by address.

Enter Coordinates in Degrees, Minutes, Seconds

Latitude

Longitude Satellite View**Search for Address:**

Type an address in the input box below and select a match from the drop down list or select the magnifying glass button to plot the address on the map.

**Facility Manager Information**

Please supply the names and contact information for the facility manager. The facility manager is the person who will be contacted by the licensing authority in case of emergencies.

Manager Name**Manager Phone Number**


(985) 209-7758

Manager Email Address

meast@win-waste.com

Property Owner Information

Indicate all person(s) [corporate or individual] who hold legal title to the property on which this facility is located. If the property owner is a corporation, you must list all individuals or organizations that own more than 10 percent of the shares of the corporation.

Name	Type	Address	Phone	Parcels	Action
Sunny Farms Landfill LLC	PARTNERSHIP	12500 West County Road 18 Fostoria OH 44830	4194360505		

Fee Information

The following information is needed to determine the annual licensing fee for the Solid Waste & Infectious Waste facilities. A **non-refundable** application fee of \$100 is required for all applications. The remaining balance for the annual licensing fee will be invoiced upon the issuance of the annual operating license. If you do not know the following information pertaining to the type of facility being licensed, it can be located in your facility registration, permit-to-intall or any subsequent action of the Director of the Ohio EPA. If you have any questions, please contact the Ohio EPA - Division of Materials and Waste Management (DMWM) at 614-644-2621.

Authorized Maximum Daily Waste Receipt

Please provide the requested details concerning the Authorized Maximum Daily Waste Receipt (AMDWR) limit for this facility and the official documents which established the limit.

Authorized Maximum Daily Waste Receipt

7500

tons

Disposal Fee Contact Information

(ID: 23120)

Please provide the requested information concerning the disposal fee contact information.

Name

Tanya Thomas

Mailing Address Line 1

12500 West County Road 18

Mailing Address Line 2**Country**

USA

**State**

OH

**City**

Fostoria

Zip

44830

Phone Number

(419) 436-0505

Email Address

tthomas@win-waste.com

Financial Assurance

All licensed facilities shall submit to Ohio EPA Division of Materials and Waste Management (DMWM) executed and funded financial assurance document(s). The license cannot be issued unless the financial assurance has been established and maintained for closure and post-closure care, and documentation of the financial assurance has been submitted in accordance with OAC Chapter 3745.

For renewal licenses, ensure financial assurance is maintained and on file with Ohio EPA DMWM. Proof that financial assurance is maintained may be shown by submitting a receipt from the financial institution(s) providing the financial assurance with your renewal application.

The financial assurance instrument(s) must be in the name of the business as stated above on this application.

Exhibit 3

Email from M. Reiser, Ohio EPA, to L. Wallrabenstein, SCGHD (Nov. 23, 2022)

From: Reiser, Michael
Sent: Wednesday, November 23, 2022 7:55 AM
To: Laura Wallrabenstein <lwallrabenstein@senecahealthdept.org>
Cc: Austin Nainiger <anainiger@senecahealthdept.org>; Drumm, Andrew <Andrew.Drumm@epa.ohio.gov>; Madeker, Tyler <tyler.madeker@epa.ohio.gov>
Subject: RE: SF license

Laura,
Ohio EPA - Division of Materials and Waste Management does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.
Mike

Michael A. Reiser
Environmental Manager
Ohio EPA, Northwest District Office
Division of Materials and Waste Management
Phone: 419-373-3126
Fax: 419-352-8468
Email: mike.reiser@epa.ohio.gov



From: Laura Wallrabenstein <lwallrabenstein@senecahealthdept.org>
Sent: Tuesday, November 22, 2022 2:16 PM

To: Reiser, Michael <Michael.Reiser@epa.ohio.gov> Filed with ERAC 01/12/2024
Cc: Austin Nainiger <anainiger@senecahealthdept.org>
Subject: SF license

This message was sent securely using Zix®

As is our custom, I am requesting a statement from OEPA to present to our board of health regarding SF licensing status for 2023. It would be my assumption that the landfill is in “substantial compliance” and should receive their annual operating license – but I would like to have this written from OEPA to share with the board. Thank you!!

Laura Wallrabenstein, MA, REHS

Director of Environmental Health
Seneca County General Health District
92 E. Perry St. (We’re not moving, but our address is changing!)
Tiffin, OH 44883
419-447-3691 ext. 6307
419-448-5782 (fax)
lwallrabenstein@senecahealthdept.org
www.senecahealthdept.org

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Exhibit 4

Letter to Director A. Vogel, *et al.* of Ohio EPA (April 11, 2023)



Squire Patton Boggs (US) LLP
4900 Key Tower
127 Public Square
Cleveland, Ohio 44114

O +1 216 479 8500
F +1 216 479 8780
squirepattonboggs.com

Dale E. Papajcik
T +1 216 479 8479
dale.papajcik@squirepb.com

April 11, 2023

Anne Vogel, Director
Nichole D. Lemin, Chief, Division of Materials and Waste Management
Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
Columbus, Ohio 43215

Shannon Nabors, Chief
Tyler Madeker, Environmental Specialist
Ohio EPA Northwest District Office
347 N. Dunbridge Road
Bowling Green, Ohio 43402

RE: Sunny Farms Landfill LLC's Comments for Ohio EPA's Annual Survey Evaluation of Seneca County General Health District

Dear Director Vogel, Ms. Lemin, Ms. Nabors, and Mr. Madeker:

On behalf of our client, Sunny Farms Landfill LLC ("Sunny Farms," "the landfill," or "SFL"), this comment letter is submitted for Ohio EPA's review and consideration as part of its annual survey evaluation of the Seneca County General Health District ("SCGHD" or "the Board"). SFL submits this letter for numerous reasons, but principally because SCGHD has violated the law on multiple occasions in failing to renew Sunny Farms' 2023 license. Further, SCGHD is in continuing violation of law, is disregarding Ohio EPA's legal findings, is depriving SFL of its rights under Ohio law and appears to be intent on subjecting SFL to a deprivation of rights secured by the United States Constitution. SFL respectfully submits that Ohio EPA cannot allow SCGHD to continue operating as an approved health district when SCGHD functions so unabashedly contrary to law. To do so will degrade the integrity of Ohio EPA's long-established solid waste management regulatory program.

It is well established and undisputed that SFL is in substantial compliance. Accordingly, its 2023 operating license should be renewed. Ohio EPA concluded in an email on November 23,

Offices in 20 Countries

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2022 that “Sunny Farms Landfill is in substantial compliance.” SCGHD staff acknowledged that “it would be my assumption that the landfill is in ‘substantial compliance’ and should receive their annual operating license.” See Attachment 1: Ohio EPA Substantial Compliance Email. Moreover, SCGHD inspected SFL on at least thirty-one occasions in 2022. Neither Ohio EPA nor SCGHD identified a *single* instance of non-compliance in any of these inspections. Furthermore, SFL is in full compliance with the terms of the Consent Order entered in 2019 between the Ohio Attorney General and Sunny Farms Landfill. Despite these facts, SCGHD failed to renew SFL’s operating license.

The Director should remove SCGHD from the approved list of health districts because SCGHD is not substantially complying with R.C. Chapter 3734 and O.A.C. Chapters 3745-27 and 3745-37. Such removal is a mandatory requirement of R.C. 3734.08(A). The statute states that the Director “shall remove from the approved list any health district not substantially complying with this chapter and the rules adopted under it.” R.C. 3734.08(A). Here, SCGHD is not in “substantial compliance.” Specifically, during the current annual survey evaluation period, SCGHD has:

1. Issued a Notice of Intent to Deny SFL’s 2023 operating license with no legal basis and in direct contravention of Ohio law and the recommendations by SCGHD Health Commissioner Anne Goon, SCGHD’s attorney Joe Durham and SCGHD’s consultant Chris Lund. Each of these individuals made public statements in 2022 that SFL was not in violation and/or its license should be renewed;
2. Allowed Board members to take part in license decisions and other matters concerning SFL despite such members having apparent property interests in the landfill vicinity and demonstrating what appears to be an appearance of impropriety, conflict of interest and a bias against SFL;
3. Proposed unlawful license conditions to SFL’s 2023 operating license;
4. Ignored its obligation to set a hearing regarding its Notice of Intent to Deny, even though a hearing is legally required when requested by a license applicant, and failed to timely act on SFL’s renewal application within ninety days as required by O.A.C. 3745-501-20(C)(4); and
5. Failed to meaningfully respond within a reasonable amount of time to SFL’s repeated requests for records in violation of Ohio’s public records law.

These actions (or inactions) demonstrate that SCGHD is not substantially complying with Ohio law and Ohio EPA’s regulations. SFL has sent numerous communications to SCGHD and/or its counsel advising of these unlawful actions, but SCGHD continues to ignore Ohio and federal law in numerous ways.

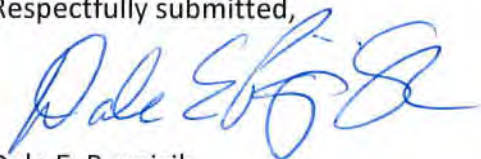
Based on the foregoing, SFL respectfully submits that Ohio EPA should determine that SCGHD is not eligible to remain on the Director’s approved list of health districts. Ohio EPA has removed health departments from its approved list for far less egregious violations than in the instant matter. See, e.g., Ohio EPA, Allen County Health Department Director’s Authorization Non-Approval (Sept. 4, 2015) (finding that Allen County Health Department (“ACHD”) “failed to

administer and enforce the Solid and Infectious Waste and C&DD programs as required by law” and ACHD is “not eligible to continue to remain on the approved list of health districts authorized to administer and enforce the solid and infectious waste laws and rules . . . nor on the approved list of health districts authorized to administer and enforce the C&DD laws and rules”). Concerning SFL, certain Board members appear to be functioning in an opposition activist role with clear intent to oppose the landfill and deny SFL’s license with no rational, reasonable, or lawful basis. This is not the role Ohio law and Ohio EPA’s regulations and policy establish for approved boards of health. Therefore, SFL recommends that the Director remove SCGHD from Ohio EPA’s approved list of health districts.

SFL and the undersigned counsel appreciate Ohio EPA's attention to this matter. SFL is cognizant of the fact that the foregoing raises difficult points for consideration. However, the activist opposition nature of certain SCGHD Board members requires such difficult points to be addressed. Failure to deal with these matters now will ensure likely repeated unlawful action in future years as well as a raft of avoidable litigation.

More detailed comments and support for the foregoing are attached. Should you have any questions, please don’t hesitate to contact me at 330.256.7551 or dale.papajcik@squirepb.com.

Respectfully submitted,



Dale E. Papajcik

cc: Todd Anderson, Ohio EPA Legal Section
Janine Maney, Ohio EPA Legal Section

**Sunny Farms Landfill LLC's Detailed Comments for
Ohio EPA's Annual Survey Evaluation of Seneca County General Health District**

I. Legal Standards Governing SCGHD Actions

SCGHD cannot remain on the approved list of health districts because it is not in substantial compliance with R.C. 3734. Pursuant to Ohio law, the Director must conduct annual surveys of each health district and "determine whether there is substantial compliance with [Chapter 3734] and rules adopted under it." R.C. 3734.08(A). The Director shall remove a health district from the approved list when the health district is "not substantially complying with [Chapter 3734] and rules adopted under it." *Id.*; O.A.C. 3745-37-08(C). Substantial compliance shall be deemed to exist if, among other things, "[t]he health district complies with rule 3745-37-07 of the Administrative Code." O.A.C. 3745-37-08(C)(10) (emphasis added). Rule 3745-37-07 states that "[a]ny reference to this rule in rule 3745-37-08 of the Administrative Code shall be construed as a reference to rules 3745-500-120, 3745-501-15, and 3745-501-20 of the Administrative Code." Therefore, a health district is not in substantial compliance where the health district fails to comply with 3745-500-120, 3745-501-15 and 3745-501-20.

Pursuant to O.A.C. 3745-501-15(A), there are eleven criteria required for a licensing authority to issue a facility license. It is undisputed that SFL meets all eleven of these criteria and SCGHD has never suggested otherwise.

Pursuant to OAC 3745-501-15(B), a licensing authority may deny a license application request for the following reasons:

- (1) Any of the criteria in paragraph (A) of this rule that are applicable to the facility are not met.
- (2) The license application is incomplete and the applicant has not addressed a notice of deficiency identified by the licensing authority not later than thirty days after receipt of the notice of deficiency.
- (3) Falsification of any material information that is required to be submitted to a licensing authority as part of the license application.
- (4) A violation of Chapter 3714. or Chapter 3734. of the Revised Code or any rule adopted under those chapters, including a violation of a term or condition of the facility's license.

SCGHD has never informed SFL that any of the above four reasons exist or form the basis for SCGHD's Notice of Intent to deny SFL's license application request.

The law is clear that a board may *not* use discretion to deny a license for a reason outside the regulatory criteria established by O.A.C. 3745-501-15 above. For licensing decisions and any other actions taken, a board of health has "only such powers as are expressly conferred upon it and those which may be fairly implied." *See Brunner v. Rhodes*, 95 Ohio App. 259, 269 (1953).

While an approved board of health is given the power to consider license renewal applications, there is no express power to make license decisions using its own discretion. Rather, the Board must determine only whether the landfill is in “substantial compliance with [R.C. 3734] and the rules adopted under it.” R.C. 3734.07; *see also Fairfield Sanitary Landfill, Inc. v. Fairfield Cnty. Dist. Bd. Of Health*, 68 Ohio. App. 3d 761, 773 (1990). The act of moving to deny an annual operating license is as significant an act as can be performed by a board of health. Issuing annual operating licenses is a fundamental reason for a board of health's existence. Consequently, failing to comply with O.A.C. 3745-501-15 must necessarily result in a finding that the health district is not in substantial compliance with R.C. 3734.

II. SCGHD's Violations of Law

SCGHD is not in substantial compliance with O.A.C. 3745-37-08(C)(10) because the Board failed to comply with O.A.C. 3745-37-07 and violated law in at least five respects during the annual evaluation period, including:

- (1) Issuing a Notice of Intent to Deny SFL's 2023 operating license with no legal basis and in direct contravention of Ohio law and the recommendations by SCGHD Health Commissioner Anne Goon, SCGHD's attorney Joe Durham and SCGHD's consultant Chris Lund. Each of these individuals made public statements in 2022 that SFL was not in violation and/or its license should be renewed;
- (2) Allowing Board members to take part in license decisions and other matters concerning SFL despite such members having apparent property interests in the landfill vicinity and demonstrating what appears to be an appearance of impropriety, conflict of interest and a bias against SFL;
- (3) Proposing unlawful license conditions to SFL's 2023 operating license;
- (4) Ignoring its obligation to set a hearing regarding its Notice of Intent to Deny, even though a hearing is legally required when requested by a license applicant, and failing to timely act on SFL's renewal application within ninety days as required by O.A.C. 3745-501-20(C)(4); and
- (5) Failing to meaningfully respond within a reasonable amount of time to SFL's repeated requests for records in violation of Ohio's public records law.

1. SCGHD's Notice of Intent to Deny Lacks Any Citation to a Violation or Legal Authority.

SCGHD's lack of substantial compliance is demonstrated by the Board voting to issue a Notice of Intent to Deny without any legal basis. The Board's authority to deny Sunny Farms' license is limited to a situation in which the landfill is not in substantial compliance with applicable environmental laws and regulations. *Fairfield Sanitary Landfill, Inc.*, 68 Ohio. App. 3d at 773; R.C. 3734.07(A) & 3734.08. The Board does not have discretion to ignore Ohio EPA's determination of substantial compliance. *Fairfield Sanitary Landfill, Inc.*, 68 Ohio App. 3d at 775 (opining that the Board “does not have the authority to override such a determination by the Ohio EPA. In other words, the facility is entitled to rely upon the EPA's determination of substantial

compliance . . .”). Yet, the Board ignored Ohio EPA’s finding of substantial compliance and voted to issue a Notice of Intent to Deny without legal support for doing so.

Sunny Farms operates under the intense regulatory scrutiny of the Ohio EPA and SCGHD. According to regulations, permits, agreements and otherwise, Sunny Farms regularly submits extensive and detailed monitoring data, logs, letters, reports, and other records to both agencies. Staff from both agencies regularly and frequently inspect the landfill. As a result of this intense scrutiny, both agencies know that SFL is in substantial compliance with applicable laws, regulations, permits, and related agreements and orders. SFL’s substantial compliance has been confirmed by: (1) Ohio EPA’s written determination; (2) at least thirty-one inspections by the Board of Health during 2022 which found no violations at the landfill; (3) findings and statements of Health Commissioner Anne Goon; and (4) findings and statements by the Board’s legal counsel Joe Durham and the Board’s consultant Chris Lund.

The Board conducted its meeting on December 29, 2022 with full knowledge of Ohio EPA’s finding of substantial compliance. At the meeting—and before the Board voted on the Notice of Intent to Deny—SCGHD Health Commissioner Anne Goon made a presentation where she advised that the “Health District’s staff and leadership concur with the conclusions of the EPA and the solid waste legal consultants employed by the health district that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcement in 2022 that would preclude issuance of the 2023 license. . . . [B]ased upon the information we currently have and our inspection practices and observations over the last year, we do recommend for approval of [sic] the 2023 operating license.” Ms. Goon also stated that the license should be issued “ideally” with the proposed conditions. However, the Board ignored her recommendation, ignored Ohio EPA’s finding of substantial compliance, and issued the Notice of Intent to Deny. The Board’s conduct violated O.A.C. 3745-37-08(C)(10) because the Board failed to comply with O.A.C. 3745-37-07, O.A.C. 3745-501-15(B) and O.A.C. 3745-501-20(C)(2).

O.A.C. Rule 3745-37-08(C)(10) requires a health district on the approved list for the solid waste program to comply with Rule 3745-501-20, which requires that “the licensing authority shall follow the applicable procedures set forth in rule 3745-500-120.” O.A.C. 3745-501-20(C)(1). Rule 3745-500-120 requires a board to act in accordance with Chapter 3745 of the Revised Code. Therefore, failure to provide a written reason for a license denial violates Rule 3745-501-20 and consequently means the health district is not in “substantial compliance” as defined in O.A.C. 3745-37-08. Therefore, SCGHD should be removed from the Director’s approved list.

Since the Notice was issued, SFL has repeatedly asked the Board and its counsel for a written response as to *any* grounds supporting the Notice. See [Attachment 2](#): SFL 1/19/23 Letter to A. Goon; see also [Attachment 3](#): SFL 2/9/23 Letter to D. Devine. The Board has failed to respond to SFL. Indeed, more than 3 months after its vote, the Board still has not articulated a single violation by SFL nor a single valid reason to support its Notice of Intent to Deny. Without any explanation about why the Board issued its Notice, SFL is unable to address any bona fide regulatory concern—if one exists. If the Board argues that it is not required to provide written notice at all until its decision is final, that position flouts basic and longstanding safeguards for

procedural due process, including that Sunny Farms “is entitled to be fairly advised of what the [Board] proposes . . . *before* it issues its final command.” *Morgan v. United States*, 304 U.S. 1, 25 (1938) (emphasis added). SFL has been deprived of its legally protected means to prepare for the license hearing because the Board issued its Notice without citing any facts or law for doing so. Any decision to allow SCGHD to remain on the approved list would condone the Board’s actions that violate SFL’s due process rights.

2. Some Board Members Have Potential Conflicts of Interest and a Bias Against SFL.

Certain members of the Board appear to be violating the law by acting with potential conflicts of interest and a bias against SFL. From comments made in the public record, it appears that at least two Board members have property interests affected by Board decisions concerning SFL. Furthermore, the public record is replete with statements, attributable to certain Board members, opposing operation of the landfill.

Ohio’s ethics law provides:

No public official or employee shall use or authorize the use of the authority or influence of office or employment to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the public official or employee with respect to that person’s duties.

R.C. 102.03(D). The Ohio Ethics Commission has advised that this provision prohibits a public official from “voting, deliberating, participating in discussions, or otherwise using his official authority or influence with regard to any matter that would provide such a definite and particular pecuniary benefit or detriment to property in which he has an interest.” See Ohio Ethics Commission Advisory, Ohio Op. Att’y Gen. No. 88-004 (1988) (discussing a city council member’s potential conflict of interest); Ohio Ethics Commission Advisory, Ohio Op. Att’y Gen. No. 92-019 (1992) (prohibiting a city council member from involvement in a decision where there was only a speculative detriment to his property).

Here, SFL has determined that the actions of at least two board members—Edward Logsdon and Clay Wolph—may be in violation of Ohio’s ethics laws because those Board members participated in voting, discussions, and deliberations regarding SFL, which could impact their interests as they or close family members have real property interests in the vicinity of the landfill.¹ These members—who voted to deny SFL’s license—should have recused themselves from all actions pertaining to SFL. Instead, they actively participated in discussions and led deliberations while seemingly harboring a bias against SFL. Not only did these Board members, on their own, appear to run afoul of the law, but they seemingly influenced other Board members

¹ It is our informed understanding that properties owned by Edward Logsdon and Clay Wolph are included within the class action area identified in *Spires v. Sunny Farms, LLC*, Seneca C.P. No. 19 CV 0041 (Dec. 27, 2021), based upon a map that identifies the Class Area. Although Mr. Wolph opted out of the final settlement, Mr. Logsdon is not identified as an opt-out. Regardless, the location of their properties in the vicinity of the landfill supports that Logsdon and Wolph have property interests associated with SFL’s license application.

as well. As one Board member admitted during the deliberations on SFL's license on December 29: ***"I feel like I know like a quarter of the information or we just haven't gotten a lot of things to make a comfortable vote really."*** Nevertheless, when Mr. Wolph, ***while acting with what appears to be a conflict of interest***, called for the vote to unlawfully issue a Notice of Intent to Deny—that Board member still voted in favor of issuing the Notice of Intent to Deny.

Even setting aside the potential violation of Ohio's ethics laws, some Board members have frequently exhibited bias against SFL throughout the license deliberation process in contravention of SCGHD's ethics policy. SCGHD's Ethics of Public Employment policy requires that employees "conduct themselves, at all times, in a manner that avoids favoritism, bias, and the appearance of impropriety." See Attachment 4: SCGHD's Ethics of Public Employment, at ¶ B. SFL has uncovered numerous occasions where some Board members acted with bias against SFL. For example, Edward Logsdon admitted his involvement ***"with this landfill opposition"*** in an open Board meeting on June 23, 2022. Perhaps Mr. Wolph's apparent bias is best illustrated by the photographs below, which are of a sign displayed in front of his chiropractic office:



Taken Feb. 21, 2023, at approx. 5:00 PM



Taken Apr. 4, 2023, at 4:18 PM

Not only does it appear that Mr. Wolph is violating SCGHD's Ethics of Public Employment policy, but he appears to be actively advocating for the Board to deprive SFL of the benefit of the rights secured by the United States Constitution. The U.S. Supreme Court has repeatedly affirmed that the Commerce Clause of the U.S. Constitution restricts states and local governments from distinguishing between in-state and out-of-state waste. *Philadelphia v. New Jersey*, 437 U.S. 617, 625 (1978) (holding that "there is no basis to distinguish out-of-state waste from domestic waste"); see also *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994); *City of Cleveland, Ohio v.*

City of Brook Park, Ohio, 893 F. Supp. 742, 752 (N.D. Ohio 1995) (“Just as are states, municipal governments are bound by the restrictions of the Commerce Clause.”). Ohio EPA indisputably recognizes that Ohio law does not authorize the agency to consider “[w]hether the waste comes from out of state. Federal law considers waste a commodity; therefore, states cannot restrict importation of out-of-state waste.” See [Municipal Solid Waste Landfills Guidance | Ohio Environmental Protection Agency](#). Ohio EPA even addressed this issue directly in response to comments on SFL’s lateral expansion:

Comment 9: “It is not fair to get trash from another state – take care of Ohio! The volume of garbage from other states being shipped to Sunny Farms Landfill is excessive. Is there a proposal for the states that are shipping their garbage to Sunny Farms to cut down their waste such as recycling?”

Ohio EPA Response to Comment 9: “Due to the Commerce Clause of the U.S. Constitution, the amount of out-of-state waste accepted at a facility cannot be regulated. . . .”

In his role as President of a regulatory body, Mr. Wolph is presumed to know the law as it relates to solid waste. SCGHD’s lawyer Joe Durham expressly advised the Board in June 2022 that “Interstate transport of solid waste is protected by the Commerce Clause.” See Eastman & Smith PowerPoint exhibit included in [Attachment 5](#): SFL 12/15/22 Letter. Yet, by the sign outside his office, ***Board President Clay Wolph appears to object to the fundamental constructs of federal and state law that are designed to not infringe on the disposal of out-of-state waste in Ohio.*** Facts indicate that the Board has made no effort to correct this impropriety.² Mr. Wolph’s apparent disregard for law, and the Board’s apparent complicity through inaction, elucidate why SCGHD should be removed from the Director’s approved list of health departments.

3. The Board Proposed Unlawful Conditions to SFL’s 2023 Operating License.

SCGHD demonstrated it was not in substantial compliance with O.A.C. 3745-37-08(C)(10) because the Board sought to impose unlawful conditions on SFL’s license and then issued its Notice of Intent to Deny simply because SFL objected to the ***unlawful*** conditions. Ohio law allows a board of health to include terms and conditions in issuance or revision to a license only where such conditions “are appropriate to ensure compliance with [R.C. 3734] and rules adopted under it.” R.C. 3734.05(A)(1). Further, a board may deny a license only based upon the criteria in O.A.C. 3745-501-15(B). Denying a license because a licensee will not agree to unlawful proposed conditions is not a valid ground for denying a license in O.A.C. 3745-501-15(B). In fact, if the Board had any questions concerning whether it had grounds to deny SFL’s license, the Board

² Additionally, Mr. Wolph’s wife, Lora Wolph, actively advocates against SFL and out-of-state waste *using Mr. Wolph’s email address*. See [Attachment 6](#): Wolph Emails. At least one of the emails SFL has received in response to its public records request does not indicate whether it was written by Lora Wolph or Clay Wolph. See [Attachment 6](#): Sept. 27, 2019 Email from Clay Wolph. It is impossible to separate Lora Wolph’s advocacy against SFL from Board President Clay Wolph given that she apparently regularly uses his email address. It is entirely improper that Mr. Wolph’s email address is used to conduct business that clearly conflicts with his ethical responsibilities as a Board member.

certainly should have sought the input and legal assistance of Ohio EPA prior to taking such action. See O.A.C. 3745-37-08(C)(11) (providing that substantial compliance exists if “[t]he health district seeks legal assistance from appropriate state and local agencies as necessary to carry out its assigned responsibilities.”).

On December 13, 2022, SCGHD Health Commissioner Anne Goon emailed a list of “proposed 2023 license conditions” to SFL. See Attachment 7: SCGHD 12/13/22 Email and Proposed License Conditions. Ms. Goon advised that these proposed conditions would be reviewed during SCGHD’s upcoming meeting just two days later. Immediately upon receipt of Ms. Goon’s email, SFL wrote a letter to SCGHD advising the Board that “[b]ased upon SFL’s superior compliance, no conditions to its operating license were justified or necessary.” See Attachment 5: SFL 12/15/22 Letter. As SFL pointed out in its letter, SCGHD’s proposed conditions were not required to ensure compliance with Ohio’s solid waste laws and rules. This was particularly true because SFL was in full and substantial compliance with the terms of its solid waste permit to install, the 2019 Consent Order, and all other permits and obligations arising under Ohio Revised Code Chapter 3734. Sunny Farms’ superior compliance performance is documented, in part, in detailed reports that SFL sends monthly to Ohio EPA and SCGHD. Further, SCGHD’s lawyer confirmed **“there is no legal basis to deny issuance of Sunny Farms’ annual operating license;”** SCGHD’s consultant stated: **“We agree they have complied with the Consent Order and the license reporting requirements that has occurred over the last three years;”** and Mike Reiser at Ohio EPA confirmed that the **“Division of Materials and Waste Management does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.”**

We view SCGHD’s proposed license conditions as an attempt to regulate SFL’s actions outside the Board’s limited jurisdiction. In particular, SCGHD’s conditions included air quality requirements, even though SCGHD has no authority to regulate SFL’s air emissions. See generally O.A.C. Chapter 3745-77 (providing the Director with authority to regulate Title V air permitting). Nonetheless, consistent with its good faith approach to working with regulators, SFL advised upon receipt of the proposed conditions that it may “agree to take certain actions in response to a request by the Board . . . on a voluntary basis outside the context of the annual operating license.” See Attachment 5: SFL 12/15/22 Letter.

Notably, SCGHD did not respond to SFL’s offer to meet and discuss the proposed license conditions before it voted to deny SFL’s operating license. Clay Wolph, SCGHD’s Board of Health President, made the motion to issue the Notice of Intent to Deny. In a public statement following the Board’s December 29, 2022 meeting, Mr. Wolph claimed that SCGHD’s proposed conditions were reasonable and **“Sunny Farms opted to deny outright all of these reasonable conditions, [t]herefore, he added, the board had no choice but to begin the process of terminating the landfill operator’s license.”** See Attachment 8: Toledo Blade 1/2/23 Article. Mr. Wolph’s statement provides further evidence that the Board acted unlawfully when it voted to issue its Notice of Intent to Deny. Pursuant to O.A.C. 3745-501-15, the Board does not have carte blanche authority to renew or deny Sunny Farms’ license on a whim and/or based on personal feelings

about waste management practices and the rightful existence of the Landfill in the Northwest Ohio community. The Board's decision to deny SFL's license simply because SFL objected to unlawful and unreasonable license conditions must result in a finding that the Board is not in substantial compliance with the rules necessary to remain on Ohio EPA's approved list.

4. The Board Will Not Respond to SFL's Request to Appoint a Hearing Examiner or Schedule a Hearing.

The Board also refuses (or is delaying to such an extent that it is equivalent to a refusal) to appoint a hearing examiner or schedule a hearing on SFL's 2023 license. O.A.C. Rule 3745-37-08(C)(10) requires a health district on the approved list to comply with Rule 3745-500-120. See O.A.C. 3745-37-08(C)(10) and 3745-37-07. When denying or revoking a license, an approved board of health shall provide, upon request, a hearing. O.A.C. 3745-500-120(D)(1)(b). SFL requested a hearing on the Board's Notice of Intent to Deny nearly three months ago on January 19, 2023. See Attachment 2. However, the Board has failed to appoint a hearing examiner, failed to establish appropriate and legally required hearing procedures, and failed to schedule a hearing. The Board's failure to comply with O.A.C. 3745-500-120 constitutes another basis for the Director removing SCGHD from Ohio EPA's approved list.

The Board is also in continuing violation of law because it has failed to issue SFL's license within the required period of time for doing so. O.A.C. Rule 3745-37-08(C)(10) requires a health district on the approved list to comply with Rule 3745-501-20. An approved health district "shall either issue or deny a license . . . **not later than ninety days after the date upon which a complete application is received.**" O.A.C. 3745-501-20(C)(4) (emphasis added). SFL's license renewal application was submitted on September 27, 2022. The Board did not vote on SFL's license until December 29, 2022, which was **ninety-three days** after the application was submitted. More importantly, as of the date of this letter—more than **180 days** after the application was submitted—the Board has still not scheduled the hearing on SFL's license application. This failure to schedule a hearing date is not just a single violation of Ohio law but is a daily recurring violation of law. The Board's continuing violation highlights the particularly egregious nature of its failure to maintain substantial compliance with the rules considered in the Director's survey and approval under O.A.C. 3745-37-08.

5. The Board Has Not Responded to SFL's Public Records Requests Within a Reasonable Period of Time.

SCGHD expands its noncompliance by not fully responding to SFL's numerous public records requests submitted during the past six months. Ohio law states that "[u]pon request by any person . . . all public records responsive to the request *shall be promptly prepared* and made available for inspection," and "a public office or person responsible for public records shall make copies of the requested public record available . . . *within a reasonable period of time.*" R.C. 149.43(B)(1) (emphasis added). In other public records cases, courts have found that delays for as few as thirty-seven days can constitute an unreasonable delay. See *Cleveland Assoc. of Rescue Employees/ILA Local 1975 v. City of Cleveland*, 123 N.E.3d 374 (Ohio Ct. App. 2018) (concluding two months was an unreasonable delay where relator sought attorney's fees in a mandamus

action and collecting cases that determined 103, eighty-eight, and thirty-seven days were also unreasonable).

A timeline with key dates regarding SCGHD's incomplete and untimely response to these public records requests is as follows:

- September 23, 2022: SFL submitted its first public records request to SCGHD;
- December 16, 2022: Health Commissioner Anne Goon provided SFL with an update on the public records request but did not provide the requested records;
- December 2022: SCGHD provided SFL with a miniscule portion of the requested records;
- January 12, 2023: SFL renewed its public records request during a special Board meeting, specifically requesting email communications *"from any current or former Seneca County General Health District Board Member to any employee or member of the public, or to any current or past Board members that contains information about the Sunny Farms Landfill, WIN Waste Innovations or anything in general that is pertinent to the SCGHD oversight of Sunny Farms Landfill;"*
- January 13, 2023: SFL's second public records request was acknowledged by Health Commissioner Anne Goon;
- January 19, 2023: SFL's counsel sent records request letters to counsel for SCGHD, Joe Durham;
- March 6, 2023: SFL's counsel contacted Bill Haak (SCGHD's new legal counsel) to stress the importance of receiving a timely response to the public records request;
- March 22, 2023: SFL's counsel followed up with Bill Haak again regarding SFL's public records request;
- March 28, 2023: SFL received a partial response to its records request;
- March 31, 2023: SFL's counsel followed up with Jack Van Kley and was informed that a second batch of documents would likely be provided over the weekend;
- April 3, 2023: SFL received the second batch of the SCGHD records;
- As of April 11, 2023, SCGHD's responses are incomplete and not in accordance with law.

Although SCGHD produced some additional records this past week, SFL has not received many of the specific public records it requested. Notably absent are records of communications (text, email, etc.) by and between Board members. Regardless, the delay in producing these records was unreasonable and violated Ohio Public Records law, in that it has taken **over 180 days** for SCGHD to provide an **incomplete** response to SFL's multiple records requests.

Ohio law further states that "[i]f a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing." R.C. 149.43(B)(3). If SCGHD's purported explanation for failure to provide the public records is based on a denial of SFL's request, SCGHD has failed to provide any reason for doing so, either verbally or in writing, as required by law. SCGHD's clear contravention of Ohio public

records law provides further support for the Director removing SCGHD from Ohio EPA's approved list of health departments.

III. Conclusion

In summary, SCGHD has not acted in substantial compliance with R.C. Chapter 3734 and O.A.C. Chapters 3745-27 and 3745-37 during the 2022 survey evaluation period and, therefore, should not remain on the Director's list of approved health districts. SCGHD has (1) unlawfully failed to issue the landfill's 2023 operating license; (2) proposed license conditions that were unlawful; (3) unlawfully issued a Notice of Intent to Deny SFL's license when it refused to adhere to those unlawful conditions; (4) unlawfully refused to provide a hearing on the Notice; (5) unlawfully refused SFL's request for a license hearing; (6) unlawfully delayed the license renewal process; (7) unlawfully ignored SFL's public records requests for an unreasonable period of time; and (8) acted with apparent conflicts of interest or bias in the licensing decision. As the Director has done on previous occasions regarding other health departments that were not in substantial compliance, Ohio EPA should find that SCGHD is not eligible to remain on the approved list of health districts authorized to administer and enforce the solid and infectious waste laws and rules.

All of the attachments to this letter are hereby incorporated in these comments by reference, even if not specifically addressed in the foregoing.

Attachment 1: OEPA Substantial Compliance Email

Attachment 2: SFL 1/19/23 Letter to A. Goon

Attachment 3: SFL 2/9/23 Letter to D. Devine

Attachment 4: SCGHD's Ethics of Public Employment Policy

Attachment 5: SFL 12/15/22 Letter

Attachment 6: Wolph Emails

Attachment 7: SCGHD 12/13/22 Email and Proposed License Conditions

Attachment 8: Toledo Blade 1/2/23 Article

Exhibit 5

Board Meeting Special Meeting Minutes (Dec. 29, 2022)



Seneca County Board of Health Meeting Minutes

The Seneca County Board of Health met on Thursday, December 29, 2022, at the Fostoria Municipal Building, 213 S. Main St. Fostoria Ohio 44830. With a quorum present, Board President Mr. Edward Logsdon called the Board’s special meeting to order at 6:00 pm. The Board then recited the Pledge of Allegiance.

Mr. Logsdon asked the public to please sign in to speak, so that the Board could send them answers to their questions.

Board Members Roll Call:

Dr. Mark Akers–Present	Bonnie Boroff – Excused	Edward Logsdon - Present
Scott Lyons – Excused	McKenzie Posey – Present	Natasha Vitte – Present
Robert Watson – Present	Dr. Zachary West– Present	Dr. Clay Wolph - Present

Others Present:

Anne Goon, MS, RD, LD, Health Commissioner
 Harold Huffman, PhD, Emergency Planning & Injury Prevention Manager
 Leslie Shaffer, PhD, Health Planning & Accreditation Manager

Guests:

See attached list

Motion to Rescind Resolution 2022.19– Concerning Health Commissioner’s participation on AOHC Board.

Ms. Goon withdrew her request for participation on the AOHC.

Dr. West made a motion to rescind 2022.19 Affirmation of Health Commissioner’s Duties as Vice President of Association of Ohio Health Commissioners. Dr. Wolph seconded the motion. The motion carried upon roll call vote:

Dr. Mark Akers –Yes	Edward Logsdon -Yes	McKenzie Posey – Yes
Natasha Vitte – Yes	Robert Watson – Yes	Dr. Zachary West – Yes
Dr. Clay Wolph - Yes		

Election of Board President and Vice President

Mr. Logsdon wanted to review the previous vote for 2023 Board President and Vice President which was done on 12/15/2022.

Mrs. Posey made a motion to appoint Dr. Clay Wolph as President and Dr. Zachary West as Vice President. Mrs. Vitte seconded the motion. The motion carried upon roll call vote:

Dr. Mark Akers –Yes	Edward Logsdon -Yes	McKenzie Posey – Yes
Natasha Vitte – Yes	Robert Watson – Yes	Dr. Zachary West – Yes
Dr. Clay Wolph - Yes		

Public Comments concerning Sunny Farms Landfill

Mr. Logsdon asked that the members of the public sign in to speak and that they limit their comments to 3 minutes.

Dr. West acknowledged the receipt of letters from 2 members of the public that were sent to all the Board members.

Mr. Bryan Ezyk, Vice President of Operations WIN Waste Innovations was first to speak. He said that the landfill has collaborated with the Ohio EPA and the Seneca County General Health District to adhere to some of the strictest requirements for any landfill in Ohio. Mr. Ezyk stated that Sunny Farms has demonstrated superior performance. Mr. Ezyk stated that this would be supported by the November 23, 2022 email from Mr. Mike Rieser of Ohio EPA to the Board of Health and the 5/27/2022 board meeting of the Board's environmental consultant. Mr. Ezyk feels there is no need for additional license conditions.

Susan Platt, from Loudon Township, representing the group Residents Against Trash, wanted to remind the board of several reasons to deny the license. Mrs. Platt stated that the Landfill just denied all three reasonable and lawful conditions: 1. Follow the consent order and report back to the Health Department 2. Add some precautionary measures to protect the public. 3. Monitor at least once per every 50 train cars for things that should not be allowed into the Landfill. Mrs. Platts stated that the latest testing is not back yet, so this vote can not be made with any confidence. It was the group's understanding that additional testing of surrounding soil and water was prohibited, which she felt seemed illegal and suspicious. Mrs. Platt also said the Landfill was still in violation of the clean air act. She also stated New York is sending shredded materials that could be anything and feels there is no daily oversight of hazardous waste in rail cars. She is concerned that soon there will be 2,000 more tons daily of their industrial waste. Also, that approval of a permit will encourage further expansion which would be a burden on the community. Mrs. Platt was also concerned about the reporting of tonnage being accurate and if the SO2 meters are placed in the proper location to get adequate readings. Mrs. Platt's last point is that there is no plan in place for evacuation and safety for the fires that occur. The group feels that Seneca County deserves better.

Joy Walters, a resident of Fostoria, asked the board to deny the yearly landfill license, considering the landfill just denied all reasonable and necessary conditions to protect public health. She feels that the landfill has more stringent rules because the Landfill is not a normal municipal solid waste landfill, it is a 98 percent-by rail out of state Landfill that takes in 7500 tons a day, verses a landfill that takes in a few hundred tons. She said they are under consent order due to miss management that leads to human suffering and that the problem has not gone away. She feels that until the gas containment system is in place and working, there should be no permit allowed. Ms. Walters feels to approve after 15 years of noncompliance is dereliction of duty and puts the board at risk of lawsuits from the public. She said that destroying health for the sake of profit is a crime and should not be supported for gain of any kind.

Bob Podach gave out a paper titled Drinking Water Source Assessment for the City of Fostoria prior to the meeting. He spoke to Amy Klei chief, division of drinking and ground water at Ohio EPA, about local water contamination and the report about the drinking water. He also spoke with multiple people at the EPA about a re-assessment of the report of the drinking water for Fostoria. He feels this has to stop sometime and that the board should vote no. He would like no license until there is some compliance.

Terry Love from McCutchenville asked if a Board member had to have these gases in their home all day every day with their children and grandchildren, would they feel safe. He feels the Landfill is not safe.

Myra Spires 11607 W. Twp. Rd. 108, she shared that on November 30, 2022 at 7:36 she had to call the complaint number due to strong odors at her property. The company that takes the readings came and landfill odor enter her home throughout the evening. The next day, her family all had headaches, and her son still has a cough. After calling the Health Department, she found out that there was one reading of 23.04 ppb and another 22.65 ppb. She thought that anything above 15ppb was favorable for a violation. She would like to know who is keeping the Landfill accountable for readings from their own equipment. Also, Mrs. Spires would like to have the Health Department do their own reading when a complaint call is made and to issue a violation. On December 3, 2022, she had to call again for odors at her home. That day there were no readings but an air testing person reported that there was an odor. Mrs. Spires does not support the renewal of the license and does not believe that the landfill is in substantial compliance.

Allen Weinandy of 2669 E Cr. 50, Clinton township feels that the Board of Health has the duty and responsibility to protect the health and well-being of each and every Seneca County resident. He feels the Board has the responsibility and power to vote no on this matter until such time all legal obligations have been met.

Karl Walters 620 Arbor St. Fostoria said that when he and his wife ride bicycles around Fostoria and the wind is from the south slightly east, he would have to go home due to having a hard time breathing. He is also concerned about the Portage River. He feels the board should vote what their conscious tells them to do. He feels there needs to be a better job done protecting the residents of Ohio.

Nate Heiser feels Sunny Farms Landfill should have conditions on the permit and they should be more than willing to take the extra precautionary steps. Mr. Heiser feels that Sunny Farms has never been in full compliance with the consent orders which they have had for over 20 years. He also feels the board should take this to the appeals committee and there should be no license until Sunny Farms is in full compliance.

Douglas Lear was a Fostoria resident for many years. He had a daughter who died of osteosarcoma, which is a childhood disease which is very rare and he has no explanation of how she got it. The reason he is here is about the earthquake that occurred within the last week. He was wondering why it had not been mentioned and why it isn't being investigated. He was concerned that the large hill of the Landfill could cause this to happen.

2023 Operational License for WIN Waste Innovations/Sunny Farms Landfill

Ms. Goon gave the background and current status of the operating license for Sunny Farms Landfill. The Sunny farms landfill operates under multiple permits issued by the Ohio EPA: the Municipal Solid Waste Facility permit, an air pollution control permits and National Pollutant Discharge Elimination System Permits, or also known as NPDES permits. Seneca County Health Department is authorized by the EPA to issue license to facilities, which is an annual operating License separate from the permits, conduct inspection of the landfill facilities and initiating enforcement actions against owners and operators for failing to comply with Ohio Environmental rules. Currently, WIN Waste Innovations/Sunny Farms Landfill has been operating under the Partial Consent Order and Final Judgement Entry of case number 2019-CD-0224 since July 2019. That order was between the Ohio EPA and Sunny farms landfill. The reason for the Consent Order was due to alleged violations in air pollution control and solid waste laws of the state of Ohio under revised codes chapter 3704, 3714 and 3734. No notices of Violation have been issued against Sunny Farms Landfill in 2021 or

2022 by the Health District for non compliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there is no outstanding violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license. Possible 2023 license conditions were created with the assistance of the Board of Health's solid waste and legal consultants. These conditions were shared with Sunny farms landfill, EPA and the Seneca County Board of Health. Based upon information we currently have and our inspections practices and observations over the last year, approval of the 2023 Operating License for Sunny Farms Landfill is recommended ideally with one or more of the proposed license conditions.

The conditions for the Operating License and Sunny Farms response to those conditions was reviewed at the 12/15/2022 meeting.

Mrs. Vitte asked if the Landfill has denied the license conditions. Ms. Goon explained that they have, but it is still up to the board if they want to add conditions.

Mr. Joseph Durham of Eastman and Smith gave an update on the proposed license conditions that was sent out and the reply that was received from Sunny Farms. Mr. Durham stated that the board has 3 options for the license 1. to Approve the license renewal, 2. To Approve the license renewal with conditions or 3. is to issue a notice of intent to deny. Since there has not been any notice of violations from the Health Department or the Ohio EPA and the indication that they are in substantial compliance Mr. Durham advice to the Board is that it would be very difficult to defend if they issued a notice of intent to deny. He explained the procedure involved with the intent to deny.

Mrs. Posey questioned if the Board approves the license with conditions but the Landfill does not accept then what would be the next steps. Mr. Durham explained that the Landfill could then appeal this decision to the Environmental Reviews Appeal Commission. The commission would then determine if the Board of Health acted lawfully and reasonably in imposing these conditions on top of the license. Then, depending on that decision, it could be appealed to a Court of Appeals.

Mrs. Posey then discussed her concerns and she would like to have more information on what would be sited as violations.

Mr. Durham explained that the Seneca County General Health District was not part of establishing the consent order. In that consent order established that 15ppb it is not a regulation. It says in the consent order that one exceedance is not a violation. If there are three readings in a 24-hr. period, then they have to notify the court but they don't have to take 3 readings. Mr. Durham reviewed condition number one is not only do you incorporate the terms of the consent order into the issuance of the license, but then it goes a step further and says that they have a duty to notify the Health Department immediately if they exceed 15ppb. He said they will question whether that is lawful and reasonable. Mr. Durham explained that the board will be adding a condition to a consent order that the Board is not a party to and it is not the regulation.

Mrs. Posey asked if there is any evidence that one of our employees was not allowed to do testing at the landfill. Ms. Goon explained that when Mr. Nainiger went to do a certain type of testing that was beyond the normal testing and at additional sites that were in the wet land and Sunny Farms was

not comfortable with having a sample collected from the wet land. Sunny Farms are required to protect the wet land. The Health Department and Sunny Farms Landfill then reached out to the EPA. The EPA has said that it can be tested and we are waiting to get the date that will work for the company doing the sampling. It will proceed as planned.

Mrs. Vitte asked if there was an end date to the consent order where they would need to abide by standard Ohio regulations. Mr. Durham explained that the consent order remains in place as long as they are in compliance. Ms. Goon explained they do have dead lines in the order which they have to meet. It is a multi-year consent order. The consent order addresses multiple details that relate to air, water and municipal waste.

Mrs. Vitte asked what the inspections the Health Department are looking for. Ms. Goon explained that the Health Department is required to use the EPA inspection form, which is a multi-page document and is available to the public.

Mrs. Posey questioned the allotment of the tonnage and how they are running out of space sooner. Ms. Goon explained that this license has nothing to do with the expansion and that question would need to be answered by Sunny Farms.

Mrs. Posey is concerned about the surrounding properties and asked if the trash on people's property. Ms. Goon explained not typically by itself, but Mr. Nainiger will notify them if an area needs cleaned more and they do have staff to clean up that trash. It is not a single time that will trigger a violation.

Dr. West is concerned about the transparency of Sunny Farms to the public.

The board had a discussion over the data that is collected from the Sunny Farms Landfill.

Mr. Watson asked for an update on where the Health Department is in the process of installing the additional monitors. Ms. Goon gave an update and explained the process of getting the monitors installed.

Mrs. Posey had questions if the strong winds affected the meter readings. Ms. Goon explained that there are two types of meters and that there are regulations for each. The Board discussed the readings and different things that can affect the meters.

Dr. Wolph asked if Seneca County had any say in putting the consent order together? Mr. Durham stated that Seneca County General Health District was not included in the consent order.

Dr. West stated for the record that the earthquake on 12/22/2022 was a 2.5 magnitude and was 1 mile from Sunny Farms.

Dr. Wolph made a motion to issue the intent to deny the 2023 Operational License for WIN Waste Innovations/Sunny Farms Landfill. Dr. West seconded the motion. The motion carried upon roll call vote:

Dr. Mark Akers -No	Edward Logsdon -Yes	McKenzie Posey - Yes
Natasha Vitte - Yes	Robert Watson - Yes	Dr. Zachary West - Yes
Dr. Clay Wolph - Yes		

Proposed Format of Health Director Performance Review

Dr. West explained the proposed format of the Health Director Performance Review

Dr. West made a motion to approve the proposed format of the Health Director Performance Review. Mrs. Vitte seconded the motion. The motion carried upon roll call vote:

Dr. Mark Akers –Yes	Edward Logsdon -Yes	McKenzie Posey – Yes
Natasha Vitte – Yes	Robert Watson – Yes	Dr. Zachary West – Yes
Dr. Clay Wolph - Yes		

Executive session – Personnel Matters

Dr. West made a motion to go into executive session purpose of disciplinary action of a staff member at 7:28. Mrs. Vitte seconded the motion. The motion carried upon roll call vote:

Dr. Mark Akers –Abstain	Edward Logsdon -No	McKenzie Posey – Yes
Natasha Vitte – Yes	Robert Watson – Yes	Dr. Zachary West – Yes
Dr. Clay Wolph – Yes		

The Board Returned from executive session at 7:46.

Mrs. Vitte made a motion to adjourn the meeting at 7:47 pm. Motion carried.

The next Board of Health meeting is scheduled for January 26, 2023, at 6:00 pm, at the North Central Ohio Education Service Center.

Board of Health President

Board of Health Secretary

Exhibit 6

Notice of Intent to Deny (Jan. 3, 2023)



Seneca County General Health District
Anne Goon, MS, RD, LD, Health Commissioner
92 E. Perry St., Tiffin OH 44883
Phone: (419) 447-3691; Fax: (419) 448-5782
401 Kirk St., Fostoria OH 44830
Phone: (419) 435-4401
www.senecahealthdept.org

BY CERTIFIED MAIL

January 3, 2023

Sunny Farms Landfill, LLC
12500 West County Road 18
Fostoria, OH 44830

Re: Sunny Farms Landfill; License Renewal Application; Notice of Intent to Deny

Dear Applicant,

On December 29, 2022, at a Special Meeting, the Seneca County Board of Health, by a 6-1 vote, passed a motion to Issue a Notice of Intent to Deny the Renewal of a Solid Waste Facility Operation License for the above-referenced landfill. You have thirty days from the receipt of this notice to request a hearing by serving a written signed request for a hearing to the Seneca County Board of Health, c/o Anne Goon, MS, RD, LD, Health Commissioner, Seneca County General Health District, 92 E. Perry St., Tiffin, OH 44883.

If you request a hearing, the hearing will be held in accordance with section 3709.20 and 3709.21 of the Revised Code and afford you:

- (i) The right to appear in person, by attorney, or by other such representation permitted to appear before the approved board of health;
- (ii) The opportunity to present evidence at the hearing, including the testimony of witnesses under oath, and the opportunity to cross exam opposing witnesses;
- (iii) The opportunity to proffer evidence that has been determined to be inadmissible.

If you have any questions regarding this Notice, please contact Laura Wallrabenstein, Director of Environmental Health, at 419-447-3691 ext. 307.

Sincerely,

Anne Goon, MS, RD, LD
Health Commissioner
Secretary for the Seneca County Board of Health

cc: Joseph Durham, Eastman & Smith, Ltd
Brian Ezyk, Vice President for Landfills, WIN Waste Innovations/Sunny Farms Landfill
Shannon Nabors, Ohio EPA- Northwest District Office
Austin Nainiger, Seneca County General Health District
Mike Reiser, Ohio EPA- Northwest District Office
Laura Wallrabenstein, Environmental Health Director, Seneca County General Health District

Exhibit 7

Sunny Farms' Request for Hearing (Jan. 19, 2023)



Squire Patton Boggs (US) LLP
1000 Key Tower
127 Public Square
Cleveland, Ohio 44114

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Dale E. Papajcik
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dale.papajcik@squirepb.com

January 19, 2023

VIA EMAIL AND FEDERAL EXPRESS

Seneca County Board of Health
c/o Anne Goon, MS, RD, LD, Health Commissioner
Seneca County General Health District
71 South Washington St., Suite 1102
Tiffin, OH 44883

Re: Sunny Farms Landfill LLC's Request for Hearing on Its Application for Operating License Renewal

Dear Ms. Goon:

Pursuant to O.R.C. § 3709.20 and O.A.C. § 3745-500-120, Applicant Sunny Farms Landfill LLC ("Sunny Farms" or "SFL") respectfully requests a hearing on its pending September 27, 2022 application to renew its annual operating license for the Sunny Farms Landfill (the "Landfill"). This request follows the Seneca County Board of Health (the "Board") January 3, 2023 Notice of Intent to Deny ("Notice"), received by Sunny Farms.

At the hearing required by this request, Sunny Farms will present, among other things, extensive evidence (1) about its lawful operation of the Landfill; (2) why Sunny Farms is entitled to the operating license for 2023; and (3) why the Board is compelled to issue such license. For now, Sunny Farms briefly responds to some of the legal and factual errors in the Board's Notice, reserving all rights to present all legal arguments, proffer all evidence, and seek all appropriate relief for the Board's unlawful conduct.

I. The Landfill is in Substantial Compliance—as Determined by the Ohio EPA.

Sunny Farms operates under the intense regulatory scrutiny of the Ohio EPA and Seneca County General Health District (the "SCGHD"). According to regulations, permits, agreements and otherwise, Sunny Farms regularly submits extensive and detailed monitoring data, logs, letters, reports and other records to the SCGHD and Ohio EPA. Personnel from both of these agencies

45 Offices in 20 Countries

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Please visit squirepattonboggs.com for more information.

regularly and often inspect the Landfill. As a result of this intense scrutiny, both agencies know that the Landfill is in substantial compliance with applicable laws, regulations, permits, and related agreements and orders. In fact, although Sunny Farms is in compliance with applicable regulations, SFL is continually making improvements to its Landfill operations to minimize its environmental footprint.

In the attached letter to the SCGHD dated May 18, 2022, Ohio EPA found that SCGHD referred no cases for enforcement action and none were warranted for the survey period of November 27, 2019 through March 17, 2022. Further, as shown in the email below, Ohio EPA informed the Board in writing on November 23, 2022 of the Landfill's "substantial compliance."

From: Reiser, Michael
Sent: Wednesday, November 23, 2022 7:55 AM
To: Laura Wallrabenstein <lwallrabenstein@senecahealthdept.org>
Cc: Austin Nainiger <anainiger@senecahealthdept.org>; Drumm, Andrew <Andrew.Drumm@epa.ohio.gov>; Madeker, Tyler <tyler.madeker@epa.ohio.gov>
Subject: RE: SF license

Laura,
Ohio EPA - Division of Materials and Waste Management does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.
Mike

Michael A. Reiser
Environmental Manager
Ohio EPA, Northwest District Office
Division of Materials and Waste Management
Phone: 419-373-3126
Fax: 419-352-8468
Email: mike.reiser@epa.ohio.gov



The Board conducted a meeting on December 29, 2022 with full knowledge of Ohio EPA's findings and conclusions. Indeed, at the December 29, 2022 meeting -- before the Board voted on the Notice -- SCGHD Health Commissioner Anne Goon made a presentation and advised that "no notice of violations have been issued against Sunny Farms in 2022 and 2021." She also explained that Sunny Farms is operating lawfully under the 2019 Consent Decree governing the Landfill's operations. Based on Sunny Farms' lawful conduct, overall compliance performance and the "substantial compliance" determination, Ms. Goon (the Board's own Commissioner) recommended that the Board approve Sunny Farms' license with certain conditions.

Based on these facts, the Board has no basis to deny Sunny Farms' annual operating license and accordingly is compelled by law to issue the license presently.

II. The Board's Notice is Unlawful and An Abuse of Power.

Given the Ohio EPA's finding of "substantial compliance," the Board's denial is unlawful. The Board voted to deny Sunny Farms' license without identifying a single violation and without identifying a single specific bona fide concern under applicable Ohio solid waste regulations. In fact, the Board's statements and action at the December 29, 2022 meeting showed a lack of understanding of fundamental regulatory authority and requirements, and operating conditions affecting the Landfill.

The Board is not given carte blanche authority to renew or deny Sunny Farms' license on a whim and/or based on personal feelings about lawful waste management practices and the rightful existence of the Landfill in the Northwest Ohio community. The Board's authority is expressly limited to enforcing specifically limited aspects of Ohio solid waste law as applicable to Sunny Farms. The Board is a "creature of statute" with "only such powers as are expressly conferred upon it and those which may be fairly implied from the express powers granted." *Brunner v. Rhodes*, 95 Ohio App. 259 269 (1953). The Board's authority to deny Sunny Farms' license is limited to a situation where the Landfill is not in "substantial compliance" with applicable environmental laws and regulations. *Fairfield Sanitary Landfill, Inc. v. Fairfield Cty. Dist. Bd. Of Health*, 68 Ohio App.3d 761, 773 (1990); ORC 3734.07(A) & 3734.08. The Board does not have "discretion" to ignore the Ohio EPA's "determination of substantial compliance." *Fairfield Sanitary Landfill, Inc.*, 68 Ohio App.3d at 775 (Opining that the Board "does not have the authority to override such a determination by the Ohio EPA. In other words, the facility is entitled to rely upon the EPA's determination of substantial compliance . . .").

The Board's action is also improper because the Board failed to identify in writing *any* reason for the denial. The Board's arbitrary denial would be contrary to the statute, O.R.C. § 3734.09, which requires a written reason for any denial. Practically, the lack of any explanation about why the Board issued its Notice prevents Sunny Farms from addressing any regulatory issues of potential bona fide concern with the Landfill—as the statute also requires. And, more fundamentally, the Board flouts basic—and longstanding—rules for procedural due process, including that Sunny Farms "is entitled to be fairly advised of what the [Board] proposes . . . before it issues its final command." *Morgan v. United States*, 304 U.S. 1, 25 (1934).

III. Sunny Farms Requests a Hearing and Sufficient Pre-Hearing Discovery as to the Basis for the Board's Conduct and Notice.

The Board should save the community and all others involved, time, money, and anxiety by (1) immediately reversing its unlawful action; (2) rescinding its Notice; (3) issuing the 2023 operating license; and (4) recommencing its work with Sunny Farms in a constructive fashion appropriate to a regulatory body. Absent such immediate action, Sunny Farms intends to

vigorously defend its rights through a hearing, including requesting sufficient procedural safeguards in advance of the hearing to allow Sunny Farms to understand the Board's actions and secure SFL's rights to due process under the law.

Sunny Farms shall appear and be represented at the hearing by one or more of the following attorneys, who hereby enter their appearances in this proceeding:

Brent R. Owen, brent.owen@squirepb.com
Kendra S. Sherman, kendra.sherman@squirepb.com
Squire Patton Boggs (US) LLP
2000 Huntington Center
41 South High Street
Columbus, OH 43215
Tel: (614) 365-2700
Fax: (614) 365-2499

Dale E. Papajcik, dale.papajcik@squirepb.com
Jennifer L. Satterfield, jennifer.satterfield@squirepb.com
Squire Patton Boggs (US) LLP
1000 Key Tower
127 Public Square
Cleveland, OH 44114
Tel: (216) 479-8500
Fax: (216) 479-8780

Please direct all further notices, entries, filings or communications in this proceeding to the attention of the counsel for Sunny Farms listed above.

Sunny Farms understands that the hearing must be in accordance with O.R.C. § 3709.20, and that Sunny Farms shall have the right:

- (i) to appear through its attorneys before the Board;
- (ii) to present evidence at the hearing, including the testimony of witnesses under oath, and the opportunity to cross examine opposing witnesses;
- (iii) following rulings on the admissibility of evidence, to proffer evidence that has been determined to be inadmissible;
- (iv) to a stenographic record of the hearing;
- (v) prior to issuance of a final action by the Board, to receive by certified mail a copy of the hearing examiner's written report to the Board setting forth the

examiner's findings of fact and conclusions of law and recommendation of the action to be taken by the Board, within five days after its filing;

- (vi) to file written objections to the hearing examiner's written report within ten days after receiving a copy thereof by certified mail, which the Board must consider before approving, modifying or disapproving the recommendation; and
- (vii) a copy of the Board's final action, with findings of fact and conclusions of law based on the hearing, along with a statement of how and within what time period the final action may be appealed to the Environmental Review Appeals Commission.

Sunny Farms also understands that it is entitled to notice of the hearing date, time and place at least 20 days prior to the hearing. Sunny Farms requests that the hearing be scheduled far enough in advance to allow Sunny Farms adequate time for it and its attorneys to prepare for the hearing—including to conduct an agreed-upon number of depositions and written discovery.

Further, if the Board's staff intends to present either (a) any evidence beyond the existing administrative record or (b) any witness testimony, including any expert testimony or evidence, Sunny Farms hereby requests a reasonable and adequate opportunity to: review any such additional materials; discover the names of any witnesses and the subject matter(s) of their anticipated testimony; discover the nature of any expert opinions, testimony or evidence to be presented; and prepare and present rebuttal expert opinions if necessary.

Sunny Farms hereby requests that the Board or its staff promptly provide all of the following as soon as practicable:

1. the complete administrative record relating to Sunny Farms' application;
2. any and all additional evidence that may be presented by the Board's staff at the hearing;
3. a listing of all witnesses that the staff may present at the hearing, along with summaries of their anticipated testimony;
4. a report of all expert opinions, testimony, compilations, data or other evidence which may be presented by the staff at the hearing; and
5. the transcript of, and all audio and/or visual recordings taken, of the December 29, 2022 Board meeting.

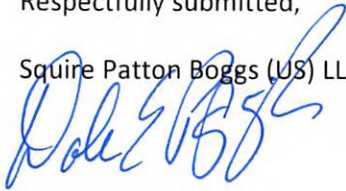
Squire Patton Boggs (US) LLP

January 19, 2023

Thank you for your attention to this request. Should you have any questions, please do not hesitate to contact undersigned legal counsel for Sunny Farms.

Respectfully submitted,

Squire Patton Boggs (US) LLP



Dale E. Papajcik

Attachment

cc: Joseph R. Durham, Esq.
Ben Nutter, WIN Waste



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

May 18, 2022

Anne Goon
Health Commissioner
Seneca County General Health District
71 S. Washington St., Suite 1102
Tiffin, Ohio 44883

Re: Seneca County General Health District
Director's Authorization
Approval
Health District Partners
Seneca County
HD7400

**Subject: Placement on the director's approved lists
Solid & Infectious Waste Programs
C&DD Program**

Dear Ms. Goon:

On March 17, 2022, the Ohio Environmental Protection Agency (Ohio EPA) completed its annual survey of your health department regarding your Solid and Infectious Waste Programs and Construction and Demolition Debris Program in accordance with Ohio Administrative Code (OAC) Rule 3745-37-08. The annual survey included the time period between November 27, 2019 and March 17, 2022.

Upon review of the survey findings, I have determined that the Seneca County General Health District is in substantial compliance and I hereby place the Seneca County General Health District on my approved lists of health departments authorized to administer and enforce the solid and infectious waste and construction and demolition debris laws and rules in accordance with Sections 3734.08 and 3714.09 of the Ohio Revised Code.

Additionally, you are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Seneca County General Health District
Director's Authorization
Page 2

Environmental Review Appeals Commission
30 East Broad Street, 4th floor
Columbus, Ohio 43215

I consider our agencies regulatory partners and appreciate the efforts of your dedicated staff. I recognize the extraordinary role your agency has played in addressing the COVID-19 pandemic, and the challenge this incredible response may have had on health district staffing and implementation of your Solid and Infectious Waste and Construction and Demolition Debris programs. If at any time Ohio EPA can provide assistance to support these programs, please encourage your staff to contact Ohio EPA's Northwest District Office.

Enclosed please find a copy of the annual survey evaluation report for your health district, which includes an assessment of administrative and field activities. This survey period included the time period between November 27, 2019 and March 17, 2022 due to the pandemic. Ohio EPA has resumed its standard annual survey period and will next survey the health district in approximately one year. If you have questions or comments regarding the manner in which our agencies administer these programs, please contact me or Joe Goicochea, Assistant Chief of the Division of Materials and Waste Management.

If you have any questions concerning this letter, please contact Tyler Madeker of Ohio EPA's Northwest District Office by telephone at 419-373-3078.

Sincerely,



Laurie A. Stevenson
Director

Enclosure: Annual Survey Evaluation Report

cc: Brian Dearth, DMWM-CO
Ralph McGinnis, DMWM-CO
Mike Reiser, DMWM-NWDO
Andy Drumm, DMWM-NWDO



Annual Survey Evaluation Report
Ohio EPA's Delegation of the Solid & Infectious Waste and Construction & Demolition Debris Programs to Local Health Districts

<p>Health District: Seneca County General Health District 71 S. Washington St., Suite 1102 Tiffin, Ohio 44883</p> <p>Core ID: 437281</p> <p>Secondary ID: HD7400</p>	<p>Survey Period:</p> <p>Start Date: 11/27/2019 End Date: 3/17/2022</p> <p>Ohio EPA Inspector: Tyler Madeker</p>
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Administrative Review

A health district either meets program requirements (Y), does not meet program requirements (N), or requirements are not applicable (N/A). Upon review of health district records and other documentation, Ohio EPA made the following conclusions:

	Solid & Infectious Waste (ORC 3734)			Construction & Demolition Debris (ORC 3714)		
	Y	N	N/A	Y	N	N/A
OAC Rule 3745-37-08(C)(1) and (D)(1)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Applications for licenses are on file for each licensed solid waste, infectious waste treatment, or C&DD facility in the health district.						
OAC Rule 3745-37-08(C)(2) and (D)(2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Applications are properly completed with all required information.						
OAC Rule 3745-37-08(C)(3) and (D)(3)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
All known solid waste, infectious waste treatment, and C&DD facilities operating in the health district do hold valid and unexpired licenses.						
OAC Rule 3745-37-08(C)(4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
No license has been issued for any new solid waste or new infectious waste treatment facility prior to the director's issuance of required permits and approval of required detail plans.						
OAC Rule 3745-37-08(C)(5) and (D)(4)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Certification of inspection and compliance has been made to the director within thirty days after issuance of any license.						
OAC Rule 3745-37-08(C)(6) and (D)(5)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The health district inspects solid waste, infectious waste treatment, and C&DD facilities with sufficient frequency to ensure substantial compliance.						

	Solid & Infectious Waste (ORC 3734)			Construction & Demolition Debris (ORC 3714)		
	Y	N	N/A	Y	N	N/A
OAC Rule 3745-37-08(C)(7) and (D)(6)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The health district maintains a file of information relating to each licensed solid waste, infectious waste treatment, and C&DD facility throughout each facility's operation and applicable closure periods. Each file includes applications for licenses, certification records, inspection records, approved plans, litigation information (except that privileged by the attorney-client relationship), and other pertinent information.						
OAC Rule 3745-37-08(C)(8) and (D)(7)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The health district undertakes appropriate actions against persons whenever necessary to bring about substantial compliance with Chapters 3734. and 3714. of the Revised Code and rules adopted thereunder.						
OAC Rule 3745-37-08(C)(9) and (D)(8)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The health district takes immediate action to abate serious hazards to the public health resulting from violations of Chapters 3734. and 3714. of the Revised Code and rules adopted thereunder.						
OAC Rule 3745-37-08(C)(10) and (D)(9)	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The health district complies with applicable facility license transfer procedures.						
OAC Rule 3745-37-08(C)(11) and (D)(10)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The health district seeks legal assistance from appropriate state and local agencies as necessary to carry out its assigned responsibilities.						
OAC Rule 3745-37-08(D)(11)				<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Each health district staff person possesses either a registered sanitarian/sanitarian-in-training certificate, the equivalent educational background required, or two years adequate work experience inspecting waste facilities.						
OAC Rule 3745-37-08(D)(12)				<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
The health district maintains a file of information relating to each exemption and license special term/condition. The file includes a copy of each exemption order issued and each license issued that contains special terms and/or conditions, as well as the health district's written justification for each action.						

Comments:

OAC Rule 3745-37-08(C)(8) and (D)(7):

The health district referred no cases for enforcement action during the survey period; however, no instances were identified that warranted the need for escalated enforcement. The health district should notify facility operators and landowners in writing of observed violations and perform follow-up inspections until violations are abated. During the annual survey period, the health district received no complaints that fell under ORC Chapters 3714 or 3734.

OAC Rule 3745-37-08(C)(9) and (D)(8):

No serious public health hazards resulting from violations of the solid and infectious waste rules were on record for this survey year.

Facility & Inspection Inventory From: 11/27/2019 To: 3/17/2022			
Facility Name	Facility Type & Minimum Annual Inspection #	Comprehensive Inspections Completed	“Other” Inspections Completed
Sunny Farms Landfill	MSW Landfill (4)	22	42
City of Fostoria	Composting Facility (Class IV) (1)	3	0
City of Tiffin	Composting Facility (Class IV) (1)	2	0
Seneca East RDF	Closed MSW Landfill (4-30 yrs p-cc) (1)	0*	0

* the health district did not perform annual inspections at Seneca East RDF landfill due limited resources related to the COVID pandemic response

Field Survey

Ohio EPA’s field survey evaluation is focused on the health district inspector’s familiarity with program rules and policies, the ability to recognize and document violations, and thoroughness of communication with an owner/operator.

Facility Type: Composting Facility (IV)
Facility Name: Fostoria Compost
Location: 1240 South Union St., Fostoria
Inspection Type: Comprehensive
Facility Representative(s): Chris Basinger
Health District Sanitarian(s): Austin Nainiger
Ohio EPA Inspector(s): Tyler Madeker
Date: March 17, 2022

Findings/Recommendations:

During the inspection, Mr. Nainiger made the following observations: the log of operations and weekly inspection reports were complete; there was one windrow of compost, one pile of brush, and one pile of shredded mulch onsite; no odor, dust, or scattered litter was observed; and, a section of ponded water was noted just northwest of the active compost area. Mr. Nainiger noted that this area should be investigated and regraded, if necessary.

No violations were noted at the time of inspection.

Mr. Nainiger was asked to summarize his findings to Ohio EPA. At the time of the inspection, Ohio EPA acknowledged the inspector’s findings and made no additional recommendations. After receiving and

reviewing a copy of the inspection letter, dated March 23, 2022, Ohio EPA determined that the inspector adequately documented the inspection of March 17, 2022.

Facility Type: MSW Landfill

Facility Name: Sunny Farms Landfill

Location: 12500 W Co. Rd. 18, Fostoria

Inspection Type: Comprehensive

Facility Representative(s): Brad Bashore, Nathan Taylor, Jeff Youngquist

Health District Sanitarian(s): Austin Nainiger

Ohio EPA Inspector(s): Tyler Madeker

Date: March 17, 2022

Findings/Recommendations:

During the inspection, Mr. Nainiger made the following observations: the log of operations was reviewed and was complete; daily and intermediate cover was adequate at the time of inspection; a leachate outbreak was present on the SE corner of the south unit, which was noted on the daily log and was being corrected; and, the onsite flare was down temporarily at the time of inspection for routine maintenance.

No violations were noted at the time of inspection.

Mr. Nainiger was asked to summarize his findings to Ohio EPA. At the time of the inspection, Ohio EPA acknowledged the inspector's findings and made no additional recommendations. After receiving and reviewing a copy of the inspection letter, dated March 23, 2022, Ohio EPA determined that the inspector adequately documented the inspection on March 17, 2022.

Solid and Infectious Waste Programs Summary

The health district conducts inspections at licensed and registered facilities within its jurisdiction to ensure compliance with the solid and infectious waste regulations. No inspections were conducted at the closed Seneca East landfill due to the health district's added duties due to Covid-19. Ohio EPA understands that the health department conducted field inspections as time and resources allowed.

While no infectious waste generator inspection was performed during the field survey, on March 17, 2022, Austin Nainiger, E.H.S.T., described the procedure for conducting infectious waste generator inspections. The Ohio EPA Generator of Infectious Waste Inspection Checklist would be used during an actual inspection. Ohio EPA acknowledged the procedure and made no additional recommendations.

It is the role of Ohio EPA to provide oversight and education to the health district in each of the programs outlined in this letter. The health district's ability to recognize, identify and cite violations in all program areas, as well as familiarity with the regulations during all types of inspections is critical to complete thorough site evaluations and enforcement of the regulations. The health district staff regularly called or emailed Ohio EPA's staff with any questions within the program areas. Ohio EPA will continue to provide technical assistance to the health district, as necessary.

The health district regularly inspects Sunny Farms Landfill to ensure compliance. The health district conducts frequent odor sampling around the facility with its Jerome meter. Also, Ohio EPA appreciates the health district's willingness to assist with Enviro Tire as needed.

Construction and Demolition Debris Program Summary

The health district does not have any licensed construction and demolition debris sites, but the health district will respond to any complaints they receive.

Post-Survey Conference

On March 17, 2022, I held a post-survey conference with Austin Nainiger, E.H.S.T., to summarize the annual survey findings. During the post-survey conference, we discussed the health district's compliance with ORC Sections 3734.08 and 3714.09. Additionally, I shared my intention to recommend the health district remain on the approved lists.

This Annual Survey Evaluation Report (Report) is for internal use to perform a preliminary assessment of approved health districts. It is not to be used as an indication of a health district's overall compliance with OAC Rule 3745-37-08, which is a determination of the director of Ohio EPA. This Report and any accompanying information will be forwarded to the director for consideration and to determine substantial compliance with Rule 3745-37-08 of the Administrative Code.

Tyler Madeker

May 5, 2022

Signature

Date

Tyler Madeker
Environmental Specialist
Division of Materials and Waste Management
Ohio Environmental Protection Agency
Northwest District Office

Exhibit 8

April 27, 2023 Board Meeting Minutes



Seneca County Board of Health Meeting Minutes

The Seneca County Board of Health met on Thursday, April 27, 2023, at the North Central Ohio Education Service Center, 928 W Market St, Tiffin, OH 44883. With a quorum present, Board President Dr. Clay Wolph called the Board's regular meeting to order at 6:00 pm. The Board then recited the Pledge of Allegiance.

Board Members Roll Call:

Edward Logsdon – Yes	Scott Lyons – Excused	McKenzie Posey –Yes
Dr. Sarah Sewell– Yes	Natasha Vitte - Yes	Allen Weinandy – Yes
Dr. Zachary West–Yes	Dr. Clay Wolph – Yes	

Others Present:

Anne Goon, MS, RD, LD, Health Commissioner
 Anita Gaietto, BBA, Fiscal Director
 Andrea Barrell, BSN, RN, Director of Nursing
 Trisha Kahler, RD, LD
 Laura Wallrabenstein, MA, RS, Director of Environmental Health
 Erika Handru, BA, Health Communications Specialist
 Lisa England, Registrar
 Meranda Koehl, RN
 Sara Brown, RN

Dr. Clay Wolph started the meeting by reading the Mission Statement in the Seneca County Board of Health bylaws:

The Seneca County General Health District, in collaboration with its citizens, promotes wellness, prevents disease, protects the environment, and assures access to quality health care.

Continuing Education –Communicable Disease Control

Meranda Koehl, RN Public Health nurse, gave a presentation explaining communicable diseases. Mrs. Koehl showed a short video that goes over the terms that describes infectious diseases and explains what communicable diseases are. Mrs. Koehl then explained her job is and why there is an emphasis on communicable diseases as a basic public health program and a fundamental program. She gave a handout that showed the disease groups as Class A, B, or C. Ms. Koehl reviewed reporting requirements for the different groups. She also reviewed who is on our communicable disease team and explained the roles of these members. Mrs. Koehl also reviewed the most common communicable diseases reported in Seneca County in 2022.

CONSENT AGENDA:

Approval of Consent Agenda

Dr. Sewell made a motion to approve the Consent Agenda:

1. Minutes from Previous Meetings 03/23/2023
2. WIC Division Report – Trisha Kahler, RD, LD
3. Nursing Division Report – Andrea Barrell, RN, BSN
4. Environmental Division Report (including Landfill report) - Laura Wallrabenstein, MA, REHS
5. Health Planning and Promotion Section Report (Harold Huffman, PhD)
6. Health Commissioner Activity Report – Anne Goon, MS, RD, LD

Mr. Edward Logsdon seconded the motion.

Dr. West presented amendments to the 03/23/2023 meeting minutes which included conversation between Dr. West and Ms. Goon.

Dr. Wolph asked Mrs. Wallrabenstein if they have gotten away where with the water analysis reports, because he has a lot of people contacting him and asking how they can decipher what is going on with their water, himself included. He has had things show up in his water that they say you shouldn't drink it without filter. Mrs. Wallrabenstein responded despite our best efforts she still does not have a report from Mr. Lund

Dr. West made a motion to amended the meeting minutes as discussed. Mrs. Vitte seconded the motion. The motion carried upon roll call vote:

Edward Logsdon – Yes	McKenzie Posey –Yes	Dr. Sarah Sewell– Yes
Natasha Vitte - Yes	Allen Weinandy – Yes	Dr. Zachary West–Yes
Dr. Clay Wolph – Yes		

The motion carried unanimously to approve the consent agenda.

ACTION AND DISCUSSION ITEMS

Health Commissioner Report

Ms. Goon provided the following updates:

1. PEOPLE PILLAR:

- Ms. Goon discussed a 4-year workforce development grant (WF23) that was submitted last week that totals \$435,000. The Health Department is proposing to use the funds to continue to support the positions that were created with the previous grants and to address gaps that were identified during the accreditation process and pandemic response. However, eventually there will need to be find other funds to support these positions. They are necessary to maintain accreditation and insure the delivery of foundational public health services here in Seneca County.
- Ms. Goon also stated that we continue to interview for 3 full-time positions. Those positions are the Health Planning and Accreditation Manager, Epidemiologist and Health Educator Position. The Health Educator position has been put on hold since our county and multiple other counties were not awarded the next round of Integrated Naloxone funding and that is what funded the Health Educator position.

2. QUALITY PILLAR:

- The ongoing communication strategy that was discussed in the February and March meetings, Erica Handru is leading our strategies to communicate in response to public questions. There is a QR code available in the back of the room. This can be used by anyone to submit questions in writing so that we can respond to those and forward them to the appropriate person to prepare a response for the individual.
- Related to air quality monitoring stations, we continue to meet every other week to work through the details of the board-funded air quality monitoring stations. We are currently in contact with several property owners to seek the necessary property easements. GBB, our solid waste consultants, have drafted the documents that are necessary as part of that sealed competitive proposal process and those are currently at the Prosecutors office for legal review.
- Also related to Sunny Farms Land, we mailed out postcards to notify residents of the Ohio EPA Public Hearing scheduled for May 11, 2023 at Stacy's Place regarding the modification of Sunny Farms NPDES Permit which is related to relocating two of the sedimentation ponds.

- As reported by the Advertiser Tribune last week, Sunny Farms landfill did submit a letter to the Ohio EPA requesting removal of the Health District from solid and infectious waste program for approved Health Districts. An approved Health District is surveyed annually by the Ohio EPA to determine whether they are in substantial compliance with chapter 3734 of the Ohio revised code and with chapters 3745-27 and 3745-37 of the administrative code. We have no idea when that response will come.
 - Also, she received a letter yesterday from the Seneca County Commissioners regarding the possible availability of solid waste funds to support the efforts to monitor and enforce the section code just mentioned. We are currently preparing a list of projects that could be undertaken if we have additional solid waste funds. They will be working on that list and be getting it to the commissioners to forward to the solid waste board.
3. GROWTH PILLAR:
- Ms. Goon wanted to remind everyone of the Seneca County Health Improvement Planning event which is next Thursday May 4, 2023 from 10:00am to 1:30pm at NCOESC. Preregistration is required. At this planning event we will be examining the 2022 Community Health Assessment results, the findings and identifying the top health priorities that as an entire collaborative of people that will work together to address over the next 3 years. We will be working together to develop an action plan for those priority areas.
4. FINANCE PILLAR:
- Next Ms. Goon discussed that the Omnibus Bill for the financing the state budget is wrapping up in the Ohio House of Representatives and will then proceed to the Ohio Senate. Unfortunately, funding that would have helped implement portions of our Community Health Improvement plan, that were designed to address the highest priority health issues were removed from the budget.

Dr. West asked who would be assembling the list in regards to the communication from the County Commissioners for additional funding? The Board all received that as well. The Commissioners were looking for an idea of what we might want them to be spending that on. Who will be compiling that list and communicating that back to them?

Ms. Goon answered currently Laura and I are working on that because they are most familiar with how the solid waste funding is currently used and where it could be expanded.

Dr. West asked if they intend to bring it to the board as well to get our thoughts on what we may also want to see as far as additional funding for oversight management.

Ms. Goon answered that if the Environmental Health Committee chooses to do that but the Commissioners want a response back within a few weeks because of their timelines. It is up to you as a board.

Dr. Sewell asked Ms. Goon if she would want them to email her ideas that they have and cc the Commissioners on it. Ms. Goon said that could be an option.

Dr. West added another option, what if we communicated from the Chair of the Environmental Committee. To work on gathering board members thoughts and email thoughts to the Environmental Committee Chair and then we can assemble them from the board's perspective and work in conjunction with the environmental division. Internally put that list together.

Ms. Goon stated her hesitation is whether you should do it in a public meeting instead, because you are gathering feed back from multiple members and that potential for cross communication. Ms. Goon stated that she would recommend relying upon the staff that know the program best to know and understand what they can and cannot use it for. Mrs. Wallrabenstein added that they can certainly share draft letter with the board.

Dr. West added that there is a list of things that have been talked about by the board as well as potential things that they would like to see added to additional oversight. So, trying to communicate what the boards prospective is in conjunction and maybe there is going to be overlap of things that are already being on the short list, working list within the environmental division to make sure that those items, since it did come to the board as well , from the board's perspective our interest or our ideas are being communicated back as well.

Ms. Goon said that it is up to the Board how you choose to proceed.

Mrs. Posey asked if it could be discussed at the end of the meeting, since everyone has probably already started coming up with ideas since they knew it was urgent. Dr. Sewell asked if Mrs. Wallrabenstein could say a little bit during that time.

Dr. West stated that we will table this for now to try to figure out how the Board would like to communicate back to the County Commissioners.

PERSONNEL ACTIONS

Dr. West made a motion to approve the following Personnel Action:

1. Resolution 2023.07 Approving Employment of Sara Brown as Full-Time, Public Health Nurse 2, effective 04/17/2023
2. Resolution 2023.08 Approving Employment of Danielle Bower as Full-Time, Public Health Nurse 2, effective 5/1/2023
3. Accept resignation of Kate Ardner, Full-Time, Public Health Nurse 2, effective 04/21/2023
4. Accept resignation of Nicole Mitchell, Full-Time, Environmental Health Clerk 1, effective 5/4/2023

Dr. Sewell seconded the motion. The motion carried unanimously.

Out of county travel

Mr. Logsdon made a motion to approve the following out of county travel:

1. Anne Goon – 04/24-04/26/23 – Ohio Public Health Association (OPHA) PH Combined Conference - \$750.00 (\$200.00 to be reimbursed by AOHC)
2. Andrea Barrell- 04/24-04/26/2023 – OPHA PH Combined Conference - \$510.00
3. Meranda Koehl – 4/24-4/27/2023 – National Association of County and City Health Officials 2023 Preparedness Summit - \$500.00 (\$450.00 to be reimbursed by Regional PHEP grant)
4. Anne Goon – 5/1/23 – The State of Ohio's Health: 2023 Health Value Dashboard - \$225.00
5. Andrea Barrell – 5/22/23 – OPHA Public Health Nursing Section Meeting - \$125.00
6. Vonnie Hartman – 6/20-6/21/23 – Finance for Health Depts training - \$176.00
7. Andrea Barrell – 8/29-8/30/23 – Medical Countermeasures – Point of Dispensing –

planning and response - \$95.00

Dr. Sewell seconded the motion. The motion carried unanimously.

Financial Transactions

Payment of Bills

Mrs. Posey made a motion to approve the March 2023 bills as presented. Mrs. Vitte seconded the motion. The motion carried unanimously.

Approval of March Intra-Fund Transfers (Appropriation Transfers)

Mrs. Vitte made a motion to approve the following Intra-Fund Transfers:

1. \$2,910.00 from 7130-0729-5306-00 (MRC - Contract Service) to 7130-0729-5304-00 (MRC - Equipment)
2. \$160.00 from 7143-0718-5102-00 (Public Health Workforce salaries) to 7143-0718-5306-25 (Public Health Workforce software license/service)
3. \$1,000.00 from 7089-0714-5102-00 (C & DD salaries) to 7089-0714-5303-00 (C & DD supplies)
4. \$500.00 from 7089-0714-5306-25 (C & DD software license/service) to 7089-0714-5303-00 (C & DD supplies)

Mr. Logsdon seconded the motion. The motion carried unanimously.

Resolutions

Dr. Wolph asked Ms. Goon to explain 2023.09 Resolution to increase credit card limit. Ms. Goon explained that there was an existing credit card policy that was approved in 2020 and that, per revised code, if the need to increase the credit limits that are allowed on the card has to come to the Board for approval. She explained that at times the limit is not high enough. For example, the Health Department currently has some great purchases that need to be made and they can get the item at the best prices by doing it through credit card through Amazon verses any other vendor. There was travel from earlier this week on the credit card currently and other purchases, so we are at the point where we can't make all the purchases needed because the limit is too low. This is why we are proposing the increase to \$10,000 for the Visa card.

Dr. West asked how often we are getting to the current limit or having issues with the current limit. Mrs. Gaietto responded that now that we are traveling more, she thinks it is going to come up more often. One thing that did add to the charges right now is that the postage that we had to pay for the EPA mailer was \$1800.00 and a couple of people traveling.

Dr. West asked if the new limit would put them able to do it without having to risk getting to that limit.

Mrs. Gaietto said that she would hope so. She also added that right now they are working on the MRC Grant and that grant ends in September so they are trying to get the stuff purchased quickly.

Dr. Wolph asked if it was currently at \$5,000.00. Mrs. Gaietto answered yes.

Dr. Wolph presented the resolution. Mr. Logsdon made a motion to approve the following Resolution:

Resolution 2023.09 - Resolution to increase credit card limit

Dr. Sewell seconded the motion. The motion carried unanimously.

Contracts and Agreements

Mr. Logsdon made a motion to approve the following contracts:

1. A & D Excavating, L.L.C., for H2Ohio home sewage treatment systems installation (Godfrey property), 04/12/2023-07/10/2023, not to exceed \$22,374.00 (payer)
2. Wyandot County General Health District, for Get Vaccinated Ohio Grant administrative support services, 07/01/2023-06/30/2024, not to exceed \$28,626.00 (payee)
3. AMETEK Brookfield, for an extended warranty for the Jerome meter, 04/12/2023 - 04/11/2024, not to exceed \$1,500.00 (payer)
4. Ohio Department of Health, for the continuation of Naloxone services, 01/01/2023 - 03/31/2023; not to exceed \$20,000.00 (payee)

Mrs. Posey seconded the motion.

Mr. Weinandy asked if the dates were correct on the fourth contract for the Ohio Department of Health. Ms. Goon said that specifically they offered a contract and they weren't ready to put out the grant proposal for the next round of grants, so they had a three-month contract and we have finally received it after the period is almost over. A new grant started April 1 that we did not get.

Mrs. Vitte asked Ms. Goon to explain Contract number two with Wyandot County General Health District. Ms. Goon stated that, is for our Get Vaccinated Grant, where we promote children being up to date and current with their vaccinations. It is about promotion and not about provision. This year, with the Ohio Department of Health the minimum grant is \$30,000.00, the amount we were eligible for fell below that, so we had to go in with another county. So there had to be conversations with other Health Departments to find another county willing to go together with us and the agreement that was made was that they would be the administrative agent. So, they are taking on the reporting requirements and the fiscal reports.

The motion to approve the contracts carried unanimously.

Discussion on Additional Funding Options from County Commissioners

Dr. West stated if they would like to put a working list together of ideas. Then, as the chair of the Environmental Committee, he can start working with advisors and the council to get prices of items that come up now. Also, with Laura here, he could try to get pricing from that, ideas about what the board's perspective might be and possible things they would like to see.

Mrs. Posey was not sure of the details needed but thought they would like some ideas. Mr. Logsdon felt that they needed to know if the health department needed more people or equipment, software or whatever is needed. Dr. West asked if they would like to put together a work list. Ms. Goon added that she would rely upon staff because you don't do the program, staff does the program, they could tell how much more money would be needed.

Mrs. Wallrabenstein added from her perspective, if we get to keep the program, we have substantial C&DD funding to use. She was not sure if we would need to ask for a lot more money from the solid waste district because the money is there in the C&DD fund. Now, if the program is taken away from us, then the C&DD funding goes away, there won't be much to work with and then we would need to rely on other funding to continue whatever programs we would still be allowed to do or have any authority to do if the program was taken from us. Mrs. Wallrabenstein thought that doing private well testing would be in our purview and an environmental impact study. Those things will still need funding because we will not have the internal funding to do that anymore. It depends what happens here.

Dr. West stated that they are asking for a list and expected cost, he said they should list essentially of what we would like to see and what the estimated cost to be and move forward in that direction. Then the list can be possibly modified later. One element, like the SO2 meters, we already have in play and we are working on the cost of what those might be and that is one cost expenditure that we would have for oversight and management. Mrs. Wallrabenstein asked if those are in addition to the stationary air monitoring locations. Dr. West answered yes, we have the two SO2 meters that we are working on that were approved by the board already. They are working on what that price might be, so there is an estimated cost that would be coming for the oversight.

Dr. Sewell said that she emailed about doing the environmental impact study and that will be a substantial sum as well, she thought we could put that at the top of the list. Mrs. Posey asked about the geological study that was talked about prior and asked if that could be part of the impact study. Mrs. Wallrabenstein thought that could be part of the impact study.

Dr. West added he would like to look at additional inspection, either contracting with someone or adding additional inspection for oversight and what that cost might be.

Mr. Weinandy asked if the board knows where we compare with other areas that have landfills, Dr. Wolph answered that there are very minimal to compare to. Mr. Weinandy wanted to know if other areas have more inspectors and Dr. Wolph answered that there are.

Ms. Goon said that she doesn't know if there is more per landfill. For example, Hamilton County does have more, but they have 12 landfills and they don't do just landfills. Mrs. Wallrabenstein also added that their inspectors have to be sanitarians.

Ms. Goon said even the question of whether you can use solid waste funds for air monitoring stations would be one we would have to explore because it is not the solid waste portion of the facility. We would have to check and see if that would be an allowable expense. Ms. Goon stated that it is already one we already mentioned and shared some of these ideas both with the commissioners and with their legal counsel.

Mr. Weinandy asked if we have the funds and can offset those costs from the current budget. Ms. Goon answered no because we already have those costs in our current budget, out of our landfill, out of our C&DD funds. Mr. Weinandy said that for the monitoring. Ms. Goon said right. Mr. Weinandy said that was what he was saying, that monitoring would come out of your current budget and additional would come out of additional funds. Ms. Goon added, like Laura just said, we have sufficient funds to cover the air quality monitoring stations.

Mrs. Vitte asked if there is any idea what we are looking at for legal cost with things that are transpiring now. Ms. Goon answered no not really, you have a limit on what you can spend on legal cost per the court order that appointed special legal counsel for you. Ms. Goon stated that the court order very specifically said your approved up to \$100,000.00. You can come back and ask for additional dollars to be allowed or granted but it can't exceed what the Prosecuting Attorney gets in a year, so there is an upper limit on that expenditure. Mrs. Vitte asked if that is something already calculated out in the budget for what currently in C&DD. Ms. Goon answered there are sufficient funds in there for that.

Dr. West asked if we have communicated with the advisors by Board to inquiry of them what things they might recommend in addition to what we might not be doing currently to add to that list. Ms. Goon responded that she has had conversations and so has Laura.

Mrs. Wallrabenstein said her understanding is the continuation of the air monitoring stations the impact study an additional inspector. Dr. Sewell asked if there was anything else that was suggested to them by the advisors. Mrs. Wallrabenstein answered no.

Dr. West said he knew there was a discussion of radiological assessment on the contents coming in and radiological monitors being added to the contents of the loads coming in, that might also be an additional thing to look into.

Mrs. Vitte asked if archeological would be part of an impact study as well. Dr. west stated a cultural impact archeological study, may possibly be included.

Dr. Sewel stated she feels that this is a good working list for them, at least to start and see what they say. Assuming that if they feel that things are not included in that, they will email us and thing can be discussed further.

Mr. Weinandy asked if there is a need to have a strong opinion one way or another on the additional inspector if that is staff that we bring on or if that is a third-party contractor. That it would be long term with bring someone else on verses a short-term contract with possibly even outside eyes coming in. Ms. Goon stated that an important thing to know is if they are not a registered sanitarian, they have no grounds to be doing an inspection. Ohio EPA and law requires that they must be a registered sanitarian or a sanitarian in training. Mrs. Wallrabenstein said it is possible to bring landfill experts, people like Chris Lund, on the site with Austin to provide in depth knowledge. To actually write a violation they would still have to go through Austin or any Sanitarian.

Dr. West asked if we can give ourselves as a body the option to have possible inspection, adding additional staff and also what the cost might be to bring advisors like Lund what those projected cost to do that. Mrs. Wallrabenstein answered sure. Dr. West said this would be like incorporating two avenues and have both options available to the board and the board would have the funding to do both options.

Mrs. Goon said to answer the question about environmental impact statements typically they look at a minimum would be like the agricultural impact, ecological and environmental impact, economic impact, health impact, housing and infostructure impact, Land use and real estate impact and transportation impact. Ms. Goon said so they can be as broad and narrow as the RFP is written for.

Mrs. Vitte ask if Ms. Goon has an idea of what it cost. Ms. Goon said yes initial conversation with our solid waste consultant is your talking about at least \$100,000.00 and it could take 8 to 10 months to do once you actual put the RFP out there. Ms. Goon said you would have to go through a similar process like we are with the air quality stations. You have to put a competitive proposal out there and they have to submit their responses and show what their cost would be to do it and then would have a contact awarded. This is actually a plan function so this is not something the Health District would have the lead on, it is something you would go through a planning commission for. This type of plan is much broader than Health and we would not that the expertise to do this.

Executive Session

Dr. West made a motion to go into executive session at 6:58 to discuss the Health Commissioner's performance evaluation for 2022. Dr. Sewell seconded the motion. The motion carried upon roll call vote:

Edward Logsdon – No
 Natasha Vitte - Yes
 Dr. Clay Wolph – Yes

McKenzie Posey –Yes
 Allen Weinandy – Yes

Dr. Sarah Sewell– Yes
 Dr. Zachary West–Yes

Dr. Wolph announced that at 7:52 the Board returned from executive session.

Dr. West stated Mr. President we have an obligation as the Seneca County Board of Health through duty and responsibility to the citizens that we represent. Then Dr. West made a motion to terminate the contract between the Seneca County Board of Health and Anne F. Goon for inefficiency of Management. Mr. Weinandy seconded the motion. The motion carried upon roll call vote:

Edward Logsdon – No
 Natasha Vitte - Yes
 Dr. Clay Wolph – Yes

McKenzie Posey –Yes
 Allen Weinandy – Yes

Dr. Sarah Sewell– Yes
 Dr. Zachary West–Yes

Dr. Wolph then stated “Commissioner Goon your contract with the Seneca County Board of Health has been terminated having received the specific required 2/3 majority vote of the Board. You are hereby informed that you are to have no contact with the staff or Board of Health members other than through the chair or legal counsel you have no access to the property of the Seneca County General Health District, you will surrender your keys, the board of the or our Legal counsel will communicate with you to arrange for a gathering of your personal belongings. Do not destroy any property of the Seneca county Board of Health that will include but not limited to Documents, Emails, phone messages, recordings etc... you have no access to your Seneca County General Health District assigned email effect immediately make no representation or assumed representation on behave of the Seneca County Board of Health or the Seneca County Health District.

Public Comment

First called was Mr. Bryan Ezyk. Mr. Ezyk said he would go at the end incase there are questions he could help answer.

Next Dr. Wolph called Ashley Stahl but she declined.

Sarena from Fostoria read scripture she felt was relevant, she read Isaiah 59 starting in chapter 13 .

Mr. Bryan Ezyk of Sunny Farms Landfill/WIN Waste Innovations then spoke he wanted to introduce himself to the new members of the board. He stated that the board is operating under the assumption that Sunny Farms is not a well-run facility, however the state of Ohio inspects the facility and the Health Department’s own inspector has inspected the facility continue to find the facility in compliance with the regulations that exist. He encouraged the Board to come to the facility anytime they would like.

Dr. West made a motion to adjourn the meeting at 7:57 pm. Motion carried.

The next Board of Health meeting is scheduled for May 25, 2023, at 6:00 pm, at the North Central Ohio Education Service Center.

 Board of Health President

 Board of Health Secretary

Exhibit 9

May 15, 2023 Board Meeting Minutes



Seneca County Board of Health Meeting Minutes

The Seneca County Board of Health met on Monday, May 15, 2023, at the North Central Ohio Education Service Center, 928 W Market St, Tiffin, OH 44883. With a quorum present, Board President Dr. Clay Wolph called the Board's regular meeting to order at 6:00 pm. The Board then recited the Pledge of Allegiance.

Board Members Roll Call:

Scott Lyons – Yes	McKenzie Posey –Yes	Dr. Sarah Sewell– Yes
Natasha Vitte - Yes	Allen Weinandy – Yes	Dr. Zachary West–Yes
Dr. Clay Wolph – Yes		

Others Present:

Laura Wallrabenstein, MA, RS, Interim Health Commissioner, Director of Environmental Health
 Anita Gaietto, BBA, Fiscal Director
 Andrea Barrell, BSN, RN, Director of Nursing
 Trisha Kahler, RD, LD, WIC Director
 Lisa England, Registrar

Consider New Contractual Legal Counsel

Dr. West presented to the board to pursue the retention of Clemans, Nelson and Associates Inc. to advise the Seneca county Board of Health on matters of employment contracts, policy and other related matters. Dr. West handed out the management agreement for Clemans, Nelson and Associates, Inc. Dr. Sewell seconded the motion.

Dr. West presented that Clemans, Nelson and Associates, Inc. has served multiple municipalities and other governmental associations, including the Seneca County Commissioners, Sheriff's office, and Job and Family Services. They would come on to help assist and advise the board as relates to contract related matters, employment related matters, and would help review and assist on policies. They charge a retainer fee of \$250.00 per month for a 12-month agreement which will cover most services that are outlined in the second component of the packet. If there was something more specific, then there are hourly rates they could charge per hour.

Mr. Derek DeVine, Seneca County Prosecutor requested to be heard. He asked if this contract had been submitted to the prosecutor's office for review. Mr. DeVine stated that you can't pass a resolution approving a contract unless it has been approved by the county prosecutor's office, Dr. West and Dr. Wolph both stated that it is a consultant agreement. Mr. DeVine stated that any contract that expends public funds must be approved by the prosecutor's office. Dr. West stated that this group would be advising and assisting, not representing them in a legal matter. They are advising and assisting alone, not for litigation purposes. Mr. DeVine said that a contract was approved for \$78 for snow removal. every contract, you have people here who send them and we review them to make sure they are legally enforceable and give any suggestion that is required by the Ohio Revised Code that we review contracts before they are approved.

Dr. West added Mr. DeVine, we reached out to this group, asked them to come in. We will retain them on this agreement and will submit it to the Prosecutors office for review. Mr. DeVine added that any charges prior to the approval are probably not going to be paid for by the county Auditor

because it has not been approved, it hasn't followed the contract process. He said there was a check list for contract approval.

Dr. West added that when we moved to retain special counsel in January, we did the same process. We moved to retain counsel, Mr. Bill Haak and Mr. Jack Van Kley, we approved their contract. That contact was then submitted to the Prosecutor's office. This is the same process we did in January. Mr. DeVine respectfully disagreed.

Dr. Wolph asked for a roll call vote to approve the contract to retain Clemons, Nelson and Associates Inc:

Scott Lyons – No	McKenzie Posey –Yes	Dr. Sarah Sewell– Yes
Natasha Vitte - Yes	Allen Weinandy – Yes	Dr. Zachary West–Yes
Dr. Clay Wolph – Yes		

Termination appeal hearing for former Seneca County Health Commissioner Anne Goon

Dr. Wolph asked if Ms. Goon has a request of the Board at this time.

Ms. Goon responded, "no I do not".

Dr. West made a motion to move into Executive Session for the purpose of termination. Mr. Weinandy seconded the motion.

Ms. Goon stated that she believes the Ohio revised code gives her the ability to specifically request for it to be in public session. Dr. West did not believe so but the board could move into Executive Session for the purpose of termination of an employee. Ms. Goon added, but a public hearing is allowed if an employee requests one as the revised code dictates.

Dr. Wolph asked if Clemons, Nelson and Associates were here? They responded that they were present. Dr. West added that they will move into Executive Session to consult. Mr. Lyons said he does not believe we can go into Executive Session; it can only be for employees and money. Dr. West stated that they can discuss the termination component in Executive Session. Mr. Lyons was unsure. A representative of Clemons, Nelson and Associates, Inc. stated ORC 121.22 g1 consideration for discipline of a public employee and he would recommend that they invite their Counsel in to Executive Session.

Dr. Wolph requested a roll call to go into Executive Session

Scott Lyons – No	McKenzie Posey –Yes	Dr. Sarah Sewell– Yes
Natasha Vitte - Yes	Allen Weinandy – Yes	Dr. Zachary West–Yes
Dr. Clay Wolph – Yes		

Dr. Wolph announced for a representative for Clemons, Nelson and Associates, Inc. and Mr. Devine to stay for the Executive Session.

Dr. Wolph Announced at 6:19 the return from the Executive Session

Dr. West made a motion to move in to Executive Session at 6:19 for the purpose of termination hearing with Anne Goon. Dr. Sewell Seconded the motion.

The Board invited Clemons, Nelson and Associates, Inc. into the Executive Session and Anne Goon. Mr. Lyons asked if she has any legal representation. Dr. Wolph responded she does not have representation; this is not a thing she would have representation for.

Scott Lyons – No
Natasha Vitte - Yes
Dr. Clay Wolph – Yes

McKenzie Posey –Yes
Allen Weinandy – Yes

Dr. Sarah Sewell– Yes
Dr. Zachary West–Yes

Dr. Wolph announced the return from the Executive Session at 7:39. No action was taken. It is their intention to continue the hearing assuming mutual agreement. Ms. Goon agreed that was correct.

Dr. West made a motion to continue the hearing at a future date. Mr. Lyons seconded the motion. The motion carried unanimously.

A representative from Clemans, Nelson and Associates, Inc. clarified that Ms. Goon was in agreement to continuing the hearing at a later date, Ms. Goon confirmed that she was.

Mr. Lyons made a motion to adjourn the meeting at 7:40 pm. Motion carried.

The next Board of Health meeting is scheduled for May 25, 2023, at 6:00 pm, at the North Central Ohio Education Service Center.

Board of Health President

Board of Health Secretary

Exhibit 10

Verified Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (May 10, 2023)

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Relator,)

v.)

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.)

Case No. _____

Judge _____

ORIGINAL ACTION
IN MANDAMUS

VERIFIED COMPLAINT FOR MANDAMUS RELIEF

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*Attorneys for Relator Sunny Farms
Landfill LLC*

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Relator,)

v.)

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.)

Case No. _____

Judge _____

ORIGINAL ACTION
IN MANDAMUS

VERIFIED COMPLAINT FOR MANDAMUS RELIEF

INTRODUCTION & OVERVIEW OF REQUESTED RELIEF

1. Relator Sunny Farms LLC (“Sunny Farms”) operates a municipal solid waste facility in Seneca County, Ohio (the “landfill” or the “facility”). Each year, Sunny Farms must renew its operating license with Respondent Seneca County Board of Health (the “Board”).
2. The facility has been in existence since approximately 1970. Sunny Farms has applied for and ultimately received its annual operating license as required every year until now.
3. Under settled Ohio law, the Board must renew Sunny Farms’ license to operate the facility if—as is the case here—Sunny Farms is in “substantial compliance” with Ohio’s environmental laws and regulations applicable to operation of a landfill and meets other criteria established for issuance of a license in Ohio Administrative Code (“OAC”) 3745-501-15(A).

Further, the Board may deny a license only on four (4) grounds as set forth in OAC 3745-501-15(B). It is undisputed that Sunny Farms meets the criteria in OAC 3745-501-15(A) and Ohio EPA has determined that Sunny Farms is in “substantial compliance.” It is further undisputed that none of the four grounds for denial in OAC 3745-501-15(B) exist to deny Sunny Farms its license.

4. Sunny Farms is therefore entitled to a 2023 operating license. The Board of Health has no discretion to determine otherwise or override Ohio EPA’s finding that Sunny Farms is in substantial compliance. *See Fairfield Sanit. Landfill, Inc. v. Fairfield Cty. Dist. Bd. of Health*, 68 Ohio App.3d 761, 775, 589 N.E.2d 1334 (10th Dist.1990) (holding that a solid waste disposal facility may not be denied an operating license if it is in substantial compliance with the law and the facility is “entitled to rely upon the EPA’s determination of substantial compliance, and the board of health has no discretion to review, reverse, or override the EPA determination”).

5. Through a combination of actions and inaction, the Board has violated and perverted the requirements of Ohio law that dictate when an annual operating license must be issued. First, the Board failed to timely act on Sunny Farms’ license application within 90 days as mandated by Ohio EPA’s regulations. *See* OAC 3745-501-20(C)(4)(a). Second, the Board issued a Notice of Intent to Deny (“the Notice”) Sunny Farms’ 2023 operating license with no legal grounds. *See* Ex. 4 attached to the Affidavit of Brian J. Ezyk (the “Ezyk Aff.”). Third, the Board continues to violate Ohio law by refusing, through inaction, to set and conduct a legally required hearing which was timely requested by Sunny Farms nearly four months ago following receipt of the Board’s Notice. *See* Ex. 5 attached to the Ezyk Aff. Fourth, the Board continues to violate Ohio law by refusing to issue a final decision on Sunny Farms’ license application.

6. The Board was required by law to issue its final order months ago. Without that final order, Sunny Farms cannot appeal. Sunny Farms cannot challenge the illegality of the

Board's Notice because the Notice is not a final action which would invoke the jurisdiction of the Ohio Environmental Review Appeals Commission ("ERAC") under Ohio Revised Code ("R.C.") § 3745.04.

7. The Board's action and inaction leaves Sunny Farms in legal purgatory. Because the Board has failed to issue a final action, or even schedule and properly conduct the hearing as required by Ohio law, Sunny Farms has no plain or adequate remedy at law but to seek relief from this Court.

8. Sunny Farms respectfully seeks relief from this Court in the form of a writ to require the Board to issue the license to which Sunny Farms is entitled as a matter of law. Sunny Farms has a "clear legal right" to its 2023 operating license, and the Board has a "clear legal duty" to grant Sunny Farms its 2023 operating license, under the Ohio law cited herein and in the accompanying Memorandum in Support. The undisputed facts grant the Board no discretion in acting on the license. In other words, issuance of the 2023 license to Sunny Farms is mandatory as a matter of law.

9. If the Court decides not to order the issuance of the license, Sunny Farms respectfully seeks relief from this Court in the form of a writ to require the Board to issue either a final, appealable action on the pending license application by a date certain or a writ to require the Board to convene a hearing by a date certain in accordance with R.C. § 3709.20 and OAC 3745-500-120(D) and subject to other procedures necessary to protect Sunny Farms' rights of due process.

JURISDICTION AND VENUE

10. Jurisdiction and venue are proper pursuant to Article IV, Section 2(B)(1) of the Ohio Constitution and R.C. § 2731.02.

PARTIES

11. Sunny Farms is an entity organized under the laws of Ohio and operates a municipal solid waste landfill located at 12500 W County Rd 18, Fostoria, Seneca County, OH 44830.

12. The Seneca County General Health District (the “Health District”) is an approved health district under R.C. § 3734.08. The Board, as the Health District’s governing body, is authorized by the Director of the Ohio Environmental Protection Agency (the “Ohio EPA”) to administer the Solid and Infectious Waste and Construction & Demolition Debris Programs pursuant to Ohio EPA’s annual survey dated May 18, 2022. *See* Ex. 5 attached to the Ezyk Aff.; *see also* R.C. §§ 3734.07; 3734.08.

13. The Board’s responsibilities include licensing and inspecting municipal solid waste landfills within its district.

OVERVIEW OF OHIO’S SOLID WASTE PROGRAM

14. In Ohio, municipal solid waste landfills must obtain and renew an annual operating license, either with the Ohio EPA or, if there is one, with the board of health of an approved district. To receive a renewed license, the landfill must timely submit a complete application by September 30 each year. Ohio EPA’s solid waste regulatory framework is designed to give the regulated community the predictability of a properly functioning, environmentally protective legal scheme.

15. Certain criteria must be met for an approved board to issue or deny a landfill operating license. These criteria are specifically outlined in OAC 3745-501-15. Where all the administrative criteria have been met (*i.e.*, the license application is complete, the landfill owner secures the appropriate authorizations and approvals, the landfill has provided financial assurance, etc.), the key consideration upon renewal is whether the landfill is in substantial compliance with applicable environmental laws. If the landfill is in substantial compliance, the board must issue

the license. If a board acts contrary to Ohio EPA's finding of substantial compliance, the board's action will be overturned as unlawful and unreasonable by ERAC. *See Fairfield Sanitary Landfill, Inc.*, 68 Ohio App.3d at 769.

16. If an approved board intends to deny the license (and there are only four legal grounds upon which a board may deny a license), it must first issue a notice of intent to deny. Then, upon the applicant's request within 30 days of receipt of the notice, the board must hold a hearing in accordance with R.C. § 3709.20. Following the hearing, the board must issue a final order approving or denying the license. *See* OAC 3745-500-120(D)(1)(d).

17. Following the issuance of the board's final order, the applicant can appeal to ERAC. *Id.* Notably, only the board's final order is an action that may be appealed to ERAC. *Id.* (“***A copy of the final action of the approved board of health*** regarding the denial or revocation of the license . . . with a statement of how and within what time period the final action ***may be appealed to the environmental review appeals commission*** shall be sent by certified mail”) (Emphasis added).

18. If the board intends to deny the facility its license, the board must “at a minimum” provide the facility with a (1) notice of its intent to deny, (2) a hearing upon request, if requested within 30 days of the notice, and (3) a copy of the board's final decision, which may then be appealed to ERAC. *See* OAC 3745-500-120(D). Each of these steps must be completed within the 90-day window referenced above. *See* OAC 3745-501-20(C)(4)(a).

19. This statutory procedure allows predictability and certainty for landfill owners and operators to obtain timely review and action on their annual operating licenses. While Ohio EPA's rules allow Sunny Farms to continue operating under its existing 2022 license while its 2023

application is pending a final action, the impact and long-term effect of the Board's unlawful actions override the short-term benefit of such rules.

20. Solid waste landfills must secure renewed operating licenses every year, year after year. Should regulatory boards be permitted to blatantly violate state law as in the present case, such permissive action will further subvert longstanding Ohio law and Ohio EPA's regulations governing annual operating licenses. The unlawful action of the Board denies the regulated community (*i.e.*, Sunny Farms) the right of certainty and the predictability of a properly and orderly-functioning environmental regulatory scheme. Nowhere does Ohio law authorize a regulatory body to act unlawfully and, as a result, illegally abuse a law-abiding member of the regulated community. The relief requested in this Verified Complaint seeks the intervention of this Court to prevent such abuse in the present case and to discourage similar unlawful behavior in the future.

21. In sum, this case concerns the Board's attempt to sidestep Ohio law and pervert the long-established Ohio EPA regulatory scheme by issuing a Notice—without legal justification—and then refusing to set a hearing or to otherwise act on the Notice in order to prevent Sunny Farms from the ability to appeal.

STATEMENT OF FACTS

22. Environmental permits and operating licenses issued in a lawful, timely and predictable manner are the business life blood of waste management facilities in Ohio such as Sunny Farms Landfill. During COVID-19, the State of Ohio designated landfill facilities as indispensable businesses. *See* Dir. of Health Amy Acton, *Director's Stay at Home Order* (March 22, 2020), <https://governor.ohio.gov/static/DirectorsOrderStayAtHome.pdf> (last visited May

8, 2023) (designating solid waste and recycling collection and removal as “Essential Infrastructure”).

23. The unlawful actions by the Board are causing significant cash expense and enterprise value damage to the business of Sunny Farms, its parent company, and investors.

24. Sunny Farms has been in operation for almost five decades. The landfill operates in an environmentally protective manner as confirmed by Ohio EPA’s environmental permitting actions and its intensive regulatory scrutiny. Sunny Farms has applied for and ultimately received its annual operating license as required every year until now.

25. During 2022, Sunny Farms operated the landfill in compliance with Ohio’s environmental laws and regulations. This fact is undisputed. The Board conducted 31 inspections of the landfill in 2022. *See* Ex. 6 attached to the Ezyk Aff. During these inspections, the Board did not identify a single deviation from applicable rules at the landfill and issued zero notices of violations to Sunny Farms in 2022. *Id.*

26. Sunny Farms timely submitted its complete license application on September 27, 2022, which required the Board to issue or deny the license within 90 days (*i.e.*, by December 26, 2022) pursuant to OAC 3745-501-20(C)(4)(a). *See* Ex. 1 attached to the Ezyk Aff.

27. From the date of Sunny Farms’ application submittal to present, the Board has not alleged a single deficiency in Sunny Farms’ application or a scintilla of evidence to show Sunny Farms failed to meet any standard necessary to secure its operating license.

28. On November 23, 2022, an Ohio EPA representative informed the Board that Sunny Farms is in “substantial compliance” with environmental regulations. Specifically, the Ohio EPA Division of Materials and Waste Management stated that it “does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health

from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.” *See* Ex. 2 attached to the Ezyk Aff.

29. On December 13, 2022, a Health District employee advised Sunny Farms that certain conditions to the 2023 license were expected to be considered by the Board. *See* Ex. 7 attached to the Ezyk Aff.

30. On December 15, 2022, Sunny Farms sent a letter to the Board outlining its disagreement with the conditions to be considered. *Id.* In the letter, Sunny Farms stated that it believes the Board’s proposed conditions were unreasonable or unlawful and not within the scope of the Board’s authority. *Id.*

31. On December 29, 2022, the Board held a special meeting regarding Sunny Farms’ license renewal. Consistent with the “substantial compliance” finding by Ohio EPA, the Board’s own employees and its outside counsel agreed that the Board should grant Sunny Farms’ 2023 License. *See* December 29, 2022 Board Meeting Minutes, Ex. 3 attached to Ezyk Aff. (“No Notices of Violation have been issued against Sunny Farms Landfill in 2021 or 2022 by the Health District for non compliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there are no violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. ***The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license.***”) (Emphasis added).

32. Ignoring the recommendations of Ohio EPA and the Board’s own staff and leadership, the Board, with no reasoning provided, voted on December 29, 2022 to issue a notice of intent to deny the license. *Id.*

33. Following the special meeting on December 29, 2022, and eight days after the Board was required by law to issue or deny the license, the Board issued the Notice on January 3, 2023, a total of 98 days after Sunny Farms submitted its renewal application. *See* Ex. 4 attached to the Ezyk Aff. The Notice provides no explanation of a legal or factual basis as to why the Board intended to deny Sunny Farms’ license.

34. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. § 3709.20 and OAC 3745-500-120. *See* Ex. 5 attached to the Ezyk Aff. Sunny Farms requested the appointment of a hearing examiner, a discovery schedule, and a thoughtful procedure for addressing the Board’s Notice.

35. Since sending the Request for Hearing, Sunny Farms has reached out to the Board on multiple occasions to request appointment of a hearing examiner and a procedure for addressing the Notice. Sunny Farms has also repeatedly requested an explanation from the Board as to why it issued the Notice. The Board has refused to respond to Sunny Farms’ requests.

36. On April 11, 2023, Sunny Farms apprised Ohio EPA of the Board’s ongoing violations and its failure to act on Sunny Farms’ 2023 license. Sunny Farms also requested that Ohio EPA determine that the Board is not eligible to remain on Ohio EPA’s list of approved boards of health because the Board is not substantially complying with Ohio’s solid waste laws and regulations. *See* Ex.7 attached to the Ezyk Aff. As further described in the letter, Sunny Farms provides details regarding the unlawful conduct of the Board and the unethical behavior exhibited by certain Board members. *Id.*

37. The Board's Health Commissioner, Anne Goon -- who had decades of experience in a health commissioner role -- made the determination at the December 29, 2022 meeting that Sunny Farms' license should be renewed. *See* Ex. 3 attached to the Ezyk Aff. Four months later, on April 27, 2023, the Board fired Ms. Goon. The Board offered no reasoning or explanation for its abrupt decision to terminate Ms. Goon. *See* Ex. 8 attached to the Ezyk Aff. (April 28, 2023 Toledo Blade article reporting on the termination of Ms. Goon).

38. Through its inaction, the Board has failed to perform its indisputable lawful duty of taking final action on Sunny Farms' renewal application, including either issuing the license or scheduling a hearing on the Notice. Further, the Board has provided no legal basis for its proposed denial of Sunny Farms' license.

LAW CONCERNING WRIT OF MANDAMUS

39. To be entitled to a writ of mandamus a relator must establish (1) that it has a clear legal right to the relief prayed for; (2) that the respondent has a clear legal duty to perform the requested act, and (3) that relator has no plain and adequate remedy at law. *See, e.g., State ex rel. Lane v. City of Pickerington*, 130 Ohio St. 3d 225, 2011-Ohio-5454, 957 N.E.2d 29, ¶ 10.

SUNNY FARMS' RIGHT TO A WRIT OF MANDAMUS AGAINST THE BOARD

40. As the board of health in a health district on the Director of Ohio EPA's approved list, the Board has a clear legal duty to issue or deny Sunny Farms' license renewal within 90 days of receiving the application pursuant to OAC 3745-501-20(C)(4)(a). The Board is in violation of the law based on its failure to act. The Board's failure to issue a final action on the license prevents Sunny Farms from filing an appeal to ERAC under R.C. § 3745.04.

41. It is undisputed that Sunny Farms meets the criteria under OAC 3745-501-15(A) for its 2022 license renewal application:

- a. Sunny Farms is the owner and operator of the landfill.
 - b. Sunny Farms holds a valid permit to install under MSWL018786.
 - c. This is not an initial facility license.
 - d. All detail plans were approved by the Director of Ohio EPA pursuant to R.C. § 3734.05, as may have been applicable for any modifications of the landfill.
 - e. The landfill has secured all appropriate approvals and authorizations pursuant to R.C. §§ 3704 (Air Pollution Control) and 6111 (Water Pollution Control). Such approvals and authorizations include Sunny Farms' Title V Air Permit No. P0125384, which was under renewal in 2022 and renewed by Ohio EPA on March 1, 2023, and Sunny Farms' National Pollution Discharge Elimination System ("NPDES") Permit No. 2IN00136*DD, effective October 1, 2020 with an expiration date of September 30, 2025.
 - f. Sunny Farms submitted a complete license application using the form provided by Ohio EPA's eBusiness Center Facility License Service, thereby conforming to OAC 3745-501-10.
 - g. Closure of the facility is not required.
 - h. The complete license application was submitted on September 27, 2022 in advance of the September 30, 2022 deadline and well in advance of the December 31, 2022 deadline for which late fees apply.
 - i. Financial assurance has been established for the landfill and such documentation is maintained on file with Ohio EPA's Division of Waste Management.
 - j. All Ohio facilities owned or operated by Sunny Farms, and its parent company WIN Waste Innovations, are in substantial compliance with, or are on a legally enforceable schedule to attain compliance.
 - k. All Ohio facilities owned or operated by Sunny Farms, and its parent company WIN Waste Innovations, have maintained a history of compliance, including resolution of any administrative or judicial enforcement actions.
 - l. Sunny Farms has demonstrated sufficient reliability, expertise, and competency to operate the facility in substantial compliance with the laws of this State.
42. The Board is only permitted to deny a license on four grounds specified by OAC 3745-501-15(B). It is undisputed none of these grounds exist here. Specifically,
- a. All the criteria under 3745-501-15(A) are met.
 - b. The license application is complete and there is no notice of deficiency issued.

- c. There is no falsification of information in Sunny Farms' application.
- d. Sunny Farms has no violations of Chapter 3714 or 3734 of the Revised Code, or any rule adopted under those chapters in 2022.

43. Because (1) Sunny Farms meets all the criteria in OAC 3745-501-15(A); (2) the Board has alleged no basis for denial of the license under OAC 3745-501-15(B); and (3) Ohio EPA has determined that Sunny Farms is in substantial compliance, the Board has a clear legal duty to issue the license requested in Sunny Farms' application.

44. Because the Board is required to issue or deny Sunny Farms' license within 90 days of receiving the application under OAC 3745-501-20(C)(4)(a), and has failed to do so by that deadline, the Board has a clear legal duty to take immediate final action on Sunny Farms' license by issuing or denying the license. The Board is in continuing violation of Ohio's environmental protection laws based on its failure to act.

45. At a minimum, in accordance with OAC 3745-500-120(D)(1)(b) and R.C. § 3709.20 and appropriate due process protections and considerations, Sunny Farms has a clear legal right to a hearing on the Board's Notice.

46. The Board has a clear legal duty to conduct the requested hearing and issue a final appealable action to Sunny Farms. The Board is in continuing violation of Ohio's environmental protection laws by shirking its clear legal duty.

47. Other than action by order of this Court, Sunny Farms has no plain and adequate remedy at law to obtain its 2023 License, or in the alternative receive a final decision with findings of fact and conclusion of law from which it can appeal, or in the alternative receive the required hearing.

48. Ohio law does not allow the Board to simply refuse to act within the timeframes required by Ohio law, and a writ of mandamus is the appropriate remedy to correct the Board's unlawful and noncompliant conduct.

PRAYER FOR RELIEF

WHEREFORE, Relator Sunny Farms respectfully requests that this Court issue:

A peremptory writ of mandamus ordering the Board to either:

- (1) Issue the 2023 license because Sunny Farms is so entitled as a matter of law; or, in the alternative,
- (2) Issue a final action by a date certain on the 2023 license, without further proceedings, which provides Sunny Farms with a right of appeal to ERAC; or, in the alternative,
- (3) Conduct a hearing by a date certain, and in a manner consistent with Sunny Farms' due process rights.

Or, if the Court decides not to grant a peremptory writ, Sunny Farms respectfully requests that the Court issue an alternative writ allowing Sunny Farms the opportunity to present further evidence demonstrating its entitlement to a writ of mandamus.

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

Dale E. Papajcik

Counsel of Record

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*Attorneys for Relator Sunny Farms
Landfill LLC*

CERTIFICATE OF SERVICE

A copy of this Verified Complaint, accompanying Memorandum in Support, Affidavit, and exhibits attached thereto were sent by e-mail and Federal Express overnight mail to Attorneys William Haak and Jack Van Kley, Counsel for Respondent, at the following addresses on this 10th day of May, 2023:

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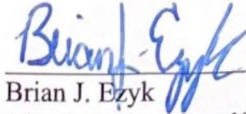
***Attorneys for Relator Sunny Farms
Landfill LLC***

**AFFIDAVIT OF BRIAN J. EZYK IN SUPPORT OF RELATOR'S
VERIFIED COMPLAINT FOR MANDAMUS RELIEF**

I, Brian J. Ezyk, Vice President of Landfills for WIN Waste Innovations, and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

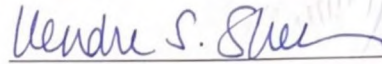
1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Complaint on the basis of personal knowledge.
2. In my role as Vice President of Landfills, I am responsible for overseeing the operations of Sunny Farms Landfill and ensuring that it is in compliance with Ohio's environmental laws and regulations.
3. I have reviewed the Complaint in this action.
4. The facts set forth in the Complaint are true based upon my personal knowledge and my review of the public record.
5. The attached exhibits are true and correct copies of what they purport to be:
 - Ex. 1 - License Application (9.27.22)
 - Ex. 2 - Email from M. Reiser, Ohio EPA, to L. Wallrabenstein, SCGHD (11.23.22)
 - Ex. 3 - Board Special Meeting Minutes (12.29.22)
 - Ex. 4 - Notice of Intent to Deny (1.3.23)
 - Ex. 5 - Request for Hearing (1.19.23)
 - Ex. 6 - Letter to D. Devine (2.9.23)
 - Ex. 7 - Letter to Director A. Vogel *et al.*, Ohio EPA (4.11.23)
 - Ex. 8 - Toledo Blade Article (4.28.23)

Affiant says nothing further.



Brian J. Ezyk
Vice President, Landfills
WIN Waste Innovations

Sworn to before me and subscribed in my presence by Brian J. Ezyk on this 9th day of May, 2023.



Notary Public

KENDRA S. SHERMAN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03



Exhibit 11

Verified Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0676 (Ohio S. Ct.) (May 24, 2023)

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Relator,)

v.)

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.)

Case No. _____

Judge _____

ORIGINAL ACTION
IN MANDAMUS

VERIFIED COMPLAINT FOR MANDAMUS RELIEF

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Attorneys for Relator Sunny Farms Landfill LLC

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HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.)

Case No. _____

Judge _____

ORIGINAL ACTION
IN MANDAMUS

VERIFIED COMPLAINT FOR MANDAMUS RELIEF

INTRODUCTION & OVERVIEW OF REQUESTED RELIEF

1. This is an original action for a writ of mandamus compelling Respondent, Seneca County Board of Health (“**Respondent**” or the “**Board**”) to comply with its obligations under the Ohio Public Records Act (the “**Act**”), Ohio Revised Code (“**R.C.**”) § 149.43(B) and produce public records for inspection to Relator Sunny Farms Landfill LLC (“**Sunny Farms**”).

2. Members of the Board stated in public meetings that they use their personal email addresses for all communications since the Board has not created official Board email addresses. Board members also stated that they received emails from their constituents in Seneca County regarding Sunny Farms. Yet, despite many requests by Relator to the Board for more than six months, Respondent has failed to produce communications to or from Board members regarding Sunny Farms. These emails are clearly “public records” within the Act. The records are

important to Sunny Farms in a pending proceeding where the Board has issued a Notice of Intent to deny Sunny Farms' annual operating license.

3. Respondent has violated the Act by (a) failing to produce public records for inspection; (b) failing to maintain public records in the manner required by the Act; and (c) failing to explain why Relator's request for public records was denied. Accordingly, Relator seeks a peremptory writ of mandamus to compel the Board to produce all records responsive to Sunny Farms' request sent on January 19, 2023 (*see* **Ex. 13** to the Affidavit of Ben Nutter (the "**Nutter Aff.**") and a writ to compel the Board to produce additional public records that were created since January 19, 2023 through the date of the filing of this Complaint. Relator also seeks an award of statutory damages, costs and its attorney's fees in pursuing this matter.

JURISDICTION AND VENUE

4. Jurisdiction and venue are proper pursuant to Article IV, Section 2(B)(1) of the Ohio Constitution, R.C. § 2731.02, and the Ohio Public Records Act, R.C. § 149.43.

PARTIES

5. Sunny Farms is an entity organized under the laws of Ohio and operates a municipal solid waste landfill located at 12500 W County Rd 18, Fostoria, Seneca County, OH 44830.

6. The Board is responsible for conducting the official business of the Seneca County General Health District ("**SCGHD**"). SCGHD is an approved health district under R.C. §3734.08.

7. As SCGHD's governing body, the Board is authorized by the Director of the Ohio Environmental Protection Agency (the "**Ohio EPA**") to administer the Solid and Infectious Waste and Construction & Demolition Debris Programs pursuant to Ohio EPA's annual survey dated May 18, 2022. *See* R.C. §§ 3734.07; 3734.08. Since it is an Ohio EPA approved health district,

the Board’s responsibilities include the licensing and inspecting of municipal solid waste landfills within its district. *See* R.C. §§ 3734.07; 3734.08.

8. The Board is a “public office,” and its members are “public officials,” as defined in R.C. §149.011, for the purposes of the Act.

9. The Board is comprised of nine members. Presently, the Board consists of: (1) Clay Wolph (President); (2) Zachary West (Vice President); (3) Sarah E. Sewell; (4) Edward Logsdon; (5) Scott Lyons; (6) McKenzie Posey; (7) Natasha Vitte; and (8) Allen Weinandy. One position is currently vacant.

BACKGROUND ON THE BOARD’S PUBLIC RECORDS POLICY

10. As a public body, the Board is subject to and responsible for compliance with the Ohio Public Records Act. In fact, the Board prepared and maintains its own official Public Records Policy prepared in July 2021 (the “**Policy**”). *See* **Ex. 1** to the Nutter Aff.

11. The Board’s Policy expressly states: “It is the policy of the Seneca County General Health District to promptly respond to all requests for public records, to make records available for inspection within a reasonable period of time during normal business hours, and to otherwise fully comply with the Ohio Public Records Act.” The Policy defines a “record” as “any document – paper, *electronic . . . or other format* – that is created or received by or comes under the jurisdiction of the Seneca County General Health District” *Id.* The Policy states that, if a public records request is denied, the Board will provide an explanation, including legal authority, setting forth why the public records request was denied and, if there are redactions, providing a supporting explanation for such redactions, including legal authority. *Id.*

12. Notably, the Board’s Policy recognizes the importance of responding to public records requests and the consequences for failing to do so. The Policy states: “The Seneca County

General Health District recognizes the legal and non-legal consequences of failure to properly respond to a public records request. *In addition to the distrust in government that failure to comply may cause, the Health District's failure to comply with a request may result in a court ordering the Health District to comply with the law and to pay the requester attorney's fees and damages.*" *Id.* (emphasis added).

STATEMENT OF FACTS

13. On September 23, 2022, Ben Nutter, WIN Waste Innovations' Community Engagement Specialist, submitted Sunny Farms' first public records request to the Board's Public Health Sanitarian, Austin Nainiger. See **Ex. 3** to the Nutter Aff. In his September 23, 2022 request, Mr. Nutter asked for copies of "*. . . all documents and records, including those in printed hard copy, electronic and digital (for example email, cell and smart phone texts) form and all voice records, recordings and transcripts of such that have been prepared or received by the SCGHD; its board of directors, trustees, officers and employees; third parties retained by the SCGHD, its directors, trustees, officers and employees; or third parties who operate at the direction of, or within the personal knowledge of, the SCGHD, its directors, trustees, officers and employees that pertain to, mention or concern in any way Sunny Farms Landfill, Sunny Farms Landfill LLC, Win Waste Innovation LLC, Tunnel Hill Partners, and any officer, director, employee, former employee or contractor to Sunny Farms Landfill of such entities.*" *Id.* (emphasis added).

14. More than two months lapsed since Sunny Farms' request with no response provided by the Board. Accordingly, on December 8, 2022, Mr. Nutter contacted the Board's Health Commissioner, Anne Goon, and expressed his concern that fulfillment of the request was taking much longer than expected. See **Ex. 4** to the Nutter Aff. The Board's Public Records Policy

states that “the Health Commissioner is the default Records Custodian for the Health District.” See **Ex. 1** to the Nutter Aff. Mr. Nutter also noted that he was concerned that “***there has been information concerning . . . Sunny Farms Landfill and the 2023 license renewal discussed between Board members and staff at Seneca County General Health District.***” *Id.* (emphasis added). Mr. Nutter requested those records as well since the documents were pertinent to Sunny Farms’ upcoming renewal of its annual license. *Id.*

15. On December 16, 2022, Ms. Goon told Mr. Nutter that once she “gathered all records related to WIN Waste Innovation’s initial request,” she would then “expand the process to address the additional items requested.” See **Ex. 5** to the Nutter Aff. Ms. Goon did not provide any requested records on December 16 but produced a small number of records several days later. None of those records included communications to or from Board members.

16. On December 29, 2022, the Board held a special meeting regarding the renewal of Sunny Farms’ annual operating license. Even though the Ohio EPA and the Board’s own staff and leadership found Sunny Farms to be in “substantial compliance” with applicable environmental regulations such that Sunny Farms’ license should be renewed, the Board, with no reasoning provided, voted to issue a Notice of Intent to deny Sunny Farms’ annual operating license for 2023 (the “**Notice**”). See **Ex. 6** to Nutter Aff. (December 29, 2022 Board Meeting Minutes).

17. Following its special meeting on December 29, the Board issued the Notice on January 3, 2023. See **Ex. 8** to the Nutter Aff. The Notice provided absolutely no explanation of any facts or legal grounds regarding why the Board intended to deny Sunny Farms’ license.

18. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. § 3709.20 and OAC 3745-500-120. See **Ex. 11** to the Nutter

Aff. Sunny Farms requested the appointment of a hearing examiner, a discovery schedule, and a procedure for addressing the Board’s Notice.

19. Since sending its Request for Hearing on January 19, Sunny Farms has contacted the Board on multiple occasions to request appointment of a hearing examiner and a hearing procedure. Sunny Farms has also repeatedly requested an explanation from the Board as to why it issued the Notice. The Board has refused to respond to Sunny Farms’ requests.

20. At the December 29, 2022 meeting, at least one Board member acknowledged that she has received emails from Seneca County constituents regarding Sunny Farms. See **Ex. 7** at 56:3-11, to the Nutter Aff (“***I’ve gotten a number of emails over the past week and even tonight it seems to be a pretty consistent complaint about trash in their yards, in their -- along the property lines or on the fields.***”) (emphasis added). None of those emails have been produced.

21. On January 12, 2023, the Board held a special meeting where some members announced that they use their personal email for communications regarding the Board. See **Ex. 10** to the Nutter Aff.

22. The fact that Board members use their personal emails for communications is noted in a post shared online by constituents with the email addresses noted as a contact method to reach members of the Board. See **Ex. 2** to the Nutter Aff. Specifically, the post states: “Since they are impossible for you to find if anyone needs the board or health email addresses, here they are:

- Jim Young, jimyoung1944@gmail.com
- Anne Sacksteder, sacks77@aol.com.
- Philip Steyer, steyer@bright.net
- Bonnie Boroff, bboroff@tiffinohio.com.
- Robert Watson, bobjudywatson@gmail.com and bwatson@tiffin.edu

* * *

- Clay Wolph, claywolph@gmail.com
- Zachary West, zacharywest@protonmail.com
- Scott Lyons, mandilsc@yahoo.com.
- Sarah Sewell, Sarah.Sewell@nationwidechildrens.org
- Edward Logsdon, Logsdon.edward@gmail.com
- Mackenzie Posey, Mdbp723@hotmail.com
- Natasha Vitte, Nvitte30@gmail.com . . .”

Id.

23. Mr. Nutter attended the January 12 meeting and, again, requested a copy of the Board’s emails and communications. That evening, Mr. Nutter sent another written request to Health Commissioner Anne Goon, specifically requesting the following:

As ALL Board members acknowledged on the record that [they] have all used their private email in [their] correspondence with past and future Board members we will need copies of all their private emails.

WIN Waste Innovations [the parent company of Sunny Farms] promptly **requests any email from any current or former Seneca County General Health District Board Member to any employee or member of the public, or to any [current] or past Board members that contains information about the Sunny Farms Landfill,** WIN Waste Innovations or anything in general that is pertinent to the SCGHD oversight of Sunny Farms Landfill and WIN Waste Innovations and any request by individuals to be appointed to the Board etc.

See **Ex. 9** to the Nutter Aff. (emphasis added).

24. The next day, Ms. Goon acknowledged Mr. Nutter’s second public records request and advised that she was “requesting Prosecutor’s DeVine’s assistance ***to ensure Board of Health members understand and comply with both records requests.***” *Id.* (emphasis added).

25. One week later, on January 19, 2023, Sunny Farms’ counsel sent a supplemental request to the Board’s counsel and the Seneca County Prosecutor, Derek Devine, seeking the following public records:

Emails to or from any member(s) of the Seneca County General Health District and/or Board of Health sent or received between January 1, 2019 and January 17, 2023 containing the following terms: ‘Sunny Farms’,

‘SFL’, ‘WIN,’ ‘WIN Waste’, ‘Tunnel Hill’, ‘landfill’, ‘Nutter’, ‘Ben’, ‘Ezyk’, ‘Brian’, ‘odor’, ‘waste’, ‘license’, ‘New York’, ‘deny’, ‘Facebook’, ‘trash’, or ‘complaint’” and “[t]ext messages to or from any member(s) of the Board sent or received between January 1, 2019 and January 17, 2023 containing any of the following terms references above (collectively, the “Key Terms”).

...

To be clear, this request encompasses communications sent to/from government issued accounts and devices, and communications sent to/from personal accounts and devices. It is well established in Ohio that communications sent/from personal accounts and devices are subject to Ohio’s Public Records Act if they “document the organization, functions, policies, decisions, procedures other activities of the office” as set forth in R.C. 149.011(G).

See Ex. 13 to the Nutter Aff. (emphasis added). By this statement Sunny Farms’ counsel made it clear that the scope of Sunny Farms’ request included public records that may require a forensic digital assessment of the personal electronic devices utilized by board members. Forensic assessments are sometimes necessary to recover records that may have been unlawfully deleted or which exist only in deep storage recesses on the devices.

26. Six more weeks went by, and Sunny Farms’ requests remained unanswered.

27. On March 2, 6, and 22, 2023, Sunny Farms’ counsel contacted the Board’s counsel seeking a response to the pending records requests. See Exs. 14-16 to the Nutter Aff. Sunny Farms’ counsel reiterated that “*we expect to see many records from and to Board of Health members that are or were generated or stored on cell phone and other devices.*” *Id.* (emphasis added).

28. The Board produced partial responses to Sunny Farms’ requests on March 28, April 3, and April 12, 2023. See Exs. 17-18 to the Nutter Aff.

29. On April 26, 2023, Sunny Farms’ counsel emailed the Board’s counsel requesting confirmation that (1) “Sunny Farms’ record requests are deemed complete by the Board of Health

and SCGHD, including all of the requests in our letter to Joe Durham and Derek Devine dated January 19, 2023” and (2) “the Board does not intend to provide its reasoning in writing, including legal authority, for any denial of our requests (in whole or in part) or basis, including legal authority, for redactions of the records that were provided.” See **Ex. 19** to Nutter Aff.

30. On April 27, 2023, the Board’s counsel informed Sunny Farms’ counsel “that the records requested by Sunny Farms Landfill is complete” and “[t]he only requested documents withheld from the production are attorney-client communications. All redactions from the produced records were attorney-client communications.” *Id.*

31. ***In all responses provided by the Board, Sunny Farms did not receive (i) emails between, to or from most Board members; (ii) any text messages; or (iii) an explanation, including legal authority, for the Board’s failure to provide records pursuant to the Act and the Board’s official Policy.***

32. Because the Board failed to respond to Sunny Farms’ request for hearing or otherwise issue a final action on the Board’s Notice, Sunny Farms filed a Writ of Mandamus with this Court on May 10, 2023 seeking an order: (1) compelling the Board to issue the 2023 license because Sunny Farms is so entitled as a matter of law; (2) compelling the Board to issue a final action by a date certain on the 2023 license, without further proceedings, which provides Sunny Farms with a right of appeal to the Ohio Environmental Review Appeals Commission; or, in the alternative, (3) compelling the Board to conduct a hearing by a date certain, and in a manner consistent with Sunny Farms’ due process rights. See **Ex. 20** to Nutter Aff.

33. The Writ requested in this action is necessary because the Board violated the Act and failed to produce its public records. Although Sunny Farms is entitled to these public records regardless, the records are especially pertinent if this Court orders the Board to conduct a hearing

on its Notice. Communication records to and from Board members are key to Sunny Farms' preparation for a hearing on the Board's Notice. Accordingly, Sunny Farms respectfully seeks a Writ of Mandamus compelling the Board to promptly produce all documents and communications that Sunny Farms has repeatedly requested from the Board for more than six months.

LAW REGARDING WRIT OF MANDAMUS AND PUBLIC RECORDS

34. "Mandamus is [an] appropriate remedy to compel compliance with R.C. [§] 149.43, Ohio's Public Records Act." *State ex rel. Lusane v. Kent Police Dept.*, 2023-Ohio-480, ¶ 9 (quoting *State ex rel. Physicians Comm. for Responsible Medicine v. Ohio State Univ. Bd. of Trustees*, 108 Ohio St.3d 288, 2006-Ohio-903, 843 N.E.2d 174, ¶ 6) (internal quotations omitted).

35. To be entitled to a writ of mandamus a relator must establish (1) that it has a clear legal right to the relief prayed for; (2) that the respondent has a clear legal duty to perform the requested act; and (3) that relator has no plain and adequate remedy at law. *See, e.g., State ex rel. Lane v. City of Pickerington*, 130 Ohio St. 3d 225, 2011-Ohio-5454, 957 N.E.2d 29, ¶ 10. A relator need not establish the third element in an action to enforce R.C. 149.43. *State ex rel. ACLU of Ohio v. Cuyahoga County Bd. of Comm'rs*, 128 Ohio St.3d 256, 2011-Ohio-625, 943 N.E.2d 553, ¶ 24 (internal quotations omitted). This Court has repeatedly held that the Act "is construed liberally in favor of broad access, and any doubt is resolved in favor of disclosure of public records." *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, 821 N.E.2d 564, ¶ 7.

36. Under the Act, "[u]pon request by any person . . . all public records responsive to the request shall be promptly prepared and made available for inspection," and "a public office or person responsible for public records shall make copies of the requested public record available to the requester . . . within a reasonable period of time." R.C. § 149.43(B)(1).

37. The Act further requires an explanation if a public records request is denied. R.C. § 149.43(B)(3) states: “If a request is ultimately denied, in part or in whole, the public office or the person responsible for the requested public record *shall provide the requester with an explanation, including legal authority, setting forth why the request was denied. If the initial request was provided in writing, the explanation also shall be provided to the requester in writing.*” (emphasis added).

38. Public records include communications not only sent to or from government-issued account and devices, but also communication sent to or from personal accounts and devices, if such communications “document the organization, functions, policies, decisions, procedures, operations, or other activities of the office” as set forth in R.C. § 149.011(G). *See, e.g., Sinclair Media III, Inc. v. City of Cincinnati*, 2019-Ohio-2624, ¶¶ 10-11 (Ohio Ct. Cl. Apr. 15, 2019), *adopted in part and modified in part*, 2019-Ohio-2623 (holding that text messages held on private devices may meet the definition of public records within the meaning of the Act and ordering disclosure of such text messages).

39. In *Sinclair Media III*, the Special Master concluded:

“The City’s proposed exclusion of all personal account/device content from the definition of “public record” would undermine the purposes of the Public Records Act, allowing public officials to conceal office correspondence with impunity. Official documents sent from a home fax machine, email exchanged through private accounts or devices, files created on a personal computer, and documents typed on personal stationary would be excluded from the definition under this reasoning. If private storage created a categorical exclusion, public records located in an official’s home office, personal laptop, personal email account, car trunk, briefcase, or other privately-paid-for information receptacle could be concealed from public scrutiny. However, I find instead that the statutory definition of public records is broadly inclusive and does not categorically exclude any physical locations, custodians, or storage devices, regardless of ownership, as places where public records may be found or “kept.” The Supreme Court has ruled

repeatedly that mere possession of otherwise public records by a third party does not prevent disclosure of the records under R.C. 149.43. *See State ex rel. Carr v. Akron*, 112 Ohio St.3d 351, 2006-Ohio-6714, 859 N.E.2d 948, ¶ 36-37 and cases cited therein, where the Court contrasts the potential quasi-agency of private third parties holding public records with the implicit responsibility of "employees and agents" over office records in their possession. ***I find that in requesting text messages from Cincinnati city council members that discuss a city official's employment status the complaint sufficiently asserts that the records were presumptively "kept by" officials for the City of Cincinnati.***

Sinclair Media III., 2019-Ohio-2624, at ¶ 11 (emphasis added); *see also Sinclair Media III*, 2019-Ohio-2623, at ¶ 14 (adopting the Special Master's recommendation and holding "the City's attempt to exclude messages stored on the personal devices of public officials and employees from the scope of the Public Records Act is inconsistent with Ohio public records case law . . . In fact, Ohio courts routinely treat text messages and emails sent by public officials and employees in the same manner as any other records, regardless of whether messages and emails are on publicly-issued or privately-owned devices").

40. Despite Sunny Farms' numerous requests and follow-up requests for more than six months, the Board has failed to provide any records that may exist on the Board members' personal devices and accounts, including emails or text messages to and from Board members. The Board has not even verified that it searched for these records from the Board's personal emails and devices, even though such emails and devices were the only method by which Board members received or sent communications in their official capacity.

41. This Court addressed the specific issue of the applicability of the Ohio Public Records Act to public records stored on electronic devices utilized by public officials in *State ex rel. Toledo Blade Co. v. Seneca Cnty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961. In *State ex rel. Toledo Blade Co.*, the Court granted a writ of mandamus to compel

the board (*i.e.*, the Seneca County Board of Commissioners) to make reasonable efforts to recover, at the board's expense, deleted emails and make them promptly available for inspection. *Id.* Relator submits that this Court's decision in *Toledo Blade* is perfectly applicable to the Board's failure in the instant matter to comply with the Ohio Public Records Act.

42. Upon information and belief, there are responsive public records from or to current and former Board members that are not privileged attorney-client communications. These records have not been produced to Sunny Farms. Specifically, as referenced above, Sunny Farms is aware that:

- (1) Board members acknowledged at their January 12, 2023 special meeting that they only use their personal emails;
- (2) At least one Board member acknowledged at the December 29, 2022 meeting that she has received emails about Sunny Farms (*see* **Ex. 7** at 56:3-11 to the Nutter Aff (“I’ve gotten a number of emails over the past week and even tonight it seems to be a pretty consistent complaint about trash in their yards, in their -- along the property lines or on the fields.”));
- (3) There are emails to Board members that were produced without the corresponding email received by the Board member (*see, e.g.*, **Ex. 12** to the Nutter Aff.); and
- (4) There are likely many emails to Board members from constituents in Seneca County regarding Sunny Farms Landfill since Board members’ personal email addresses were circulated online for this purpose.

Further, it is highly unlikely, given the Board's intense regulatory scrutiny of Sunny Farms Landfill and the Board's recent Notice of Intent to deny the landfill's 2023 operating license

coupled with the intense public interest in the Sunny Farms' facility, that absolutely no emails or text messages exist to or from Board members regarding Sunny Farms.

43. As an entity regulated by the Board, Sunny Farms has a vested interest in the Board's decision-making process and communications regarding its landfill. This is particularly relevant since: (1) Sunny Farms is currently seeking renewal of its 2023 license with the Board; (2) the Board issued a Notice of Intent to deny Sunny Farms' 2023 operating license; and (3) Ohio EPA is currently conducting its annual review regarding whether the Board should remain on the Director's approved list of health districts.

44. The Board has a clear legal duty under the Act and under SCGHD's Public Records Policy to provide responsive public records to Sunny Farms or to provide an explanation, in writing, for the denial, in whole or in part, of such request. *See Ex. 1* to the Nutter Aff. ("If a request is ultimately denied, in part or in whole, the requester will be provided an explanation, including legal authority, setting forth why the request was denied."). The Board failed to carry out its legal duty by failing to promptly provide responsive emails or other communications to Relator or an explanation for any denial of Sunny Farms' requests.

45. Sunny Farms is without any other recourse to obtain these public records except for a request pursuant to the Act and this action in mandamus Ex to comply with the Act.

PRAYER FOR RELIEF

WHEREFORE, Relator Sunny Farms respectfully requests that this Court issue:

- A. A peremptory writ of mandamus ordering the Board to:
 - (i) comply with R.C. § 149.43(B);

- (ii) provide the responsive requested records, including the requested emails and text messages to or from any members of SCGHD or the Board that may be on their personal accounts or devices;
- (iii) provide a certification by each member of the Board that they performed the required searches of their personal accounts or devices;
- (iv) recover any emails, texts or other records that may have been deleted (at the Board's cost) and make such records promptly available for inspection by Relator as this Court ordered in *State ex rel. Toledo Blade Co. v. Seneca Cnty. Bd. of Commrs.*, 120 Ohio St.3d 372, 2008-Ohio-6253, 899 N.E.2d 961; and
- (v) provide an explanation for denying Relator's request, in whole or in part, and the legal authority for doing so, promptly and without delay, within the next two weeks.

B. If this Court does not issue a peremptory writ of mandamus, an entry of an alternative writ ordering the Board to show cause why a final writ should not be issued, and, if necessary, to conduct in camera review of documents asserted to be privileged.

C. If this Court orders the Board to comply with R.C. § 149.43(B), Sunny Farms respectfully requests that this Court award Relator statutory damages, court costs and its attorney's fees under R.C. § 149.43(C); and

D. Such other relief as is proper.

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

Dale E. Papajcik

Counsel of Record

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*Attorneys for Relator Sunny Farms
Landfill LLC*

CERTIFICATE OF SERVICE

A copy of this Verified Complaint, accompanying Affidavit, and exhibits attached thereto were sent by e-mail and Federal Express overnight mail to Attorneys William Haak and Jack Van Kley, Counsel for Respondent, at the following addresses on this 24th day of May 2023:

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Van Kley Law, LLC
132 Northwoods Blvd.
Suite C-1
Columbus, Ohio 43235

William Haak
Haak Law LLC
12595 Brentwood Dr.
Chesterland, OH 44026

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

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***Attorneys for Relator Sunny Farms
Landfill LLC***

**AFFIDAVIT OF BEN NUTTER IN SUPPORT OF RELATOR'S
VERIFIED COMPLAINT FOR MANDAMUS RELIEF**

I, Ben Nutter, Community Engagement Specialist for WIN Waste Innovations ("WIN"), and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Complaint on the basis of personal knowledge.
2. I am the Community Engagement Specialist for WIN. In my role, I am responsible for community engagement and government affairs for WIN's landfill facilities, including the Sunny Farms Landfill in Fostoria, Ohio.
3. I have reviewed the Complaint in this action.
4. The facts set forth in the Complaint are true based upon my personal knowledge and my review of the public record.
5. The attached exhibits are true and correct copies of what they purport to be:
 - Ex. 1 – SCGHD Public Records Policy (7.2021)
 - Ex. 2 – Public Facebook Posts with Board Members' Emails Shared Online (1.1.2020; 1.30.23; 2.1.23)
 - Ex. 3 – Records Request from B. Nutter (9.23.2022)
 - Ex. 4 – Email from B. Nutter to A. Goon Checking Status of Response to Request (12.8.22).
 - Ex. 5 – Email from A. Goon Providing Update (12.16.22)
 - Ex. 6 – Board Meeting Minutes (12.29.22)
 - Ex. 7 – Transcript of Board Meeting (12.29.22)
 - Ex. 8 – Board Notice of Intent to Deny Sunny Farms' License (1.3.23)

- Ex. 9 - B. Nutter Records Request & Acknowledgement by A. Goon (1.12.23 - 1.13.23)
- Ex. 10 - Board Meeting Minutes (1.12.23)
- Ex. 11 – Request for Hearing (1.19.23)
- Ex. 12 - Email from A. Goon to Board Regarding Sunny Farms' Request for Hearing (1.19.23)
- Ex. 13 – Letter from D. Papajcik to J. Durham & D. Devine (1.19.23)
- Ex. 14 – Email from D. Papajcik to W. Haak & J. Van Kley (3.2.23)
- Ex. 15 - Email from D. Papajcik to W. Haak (3.6.23)
- Ex. 16 – Email from D. Papajcik to W. Haak (3.22.23)
- Ex. 17 - Emails Between J. Satterfield & J. Van Kley (3.28.23; 3.31.23)
- Ex. 18 - Email from J. Van Kley to D. Papajcik & J. Satterfield to Confirm Receipt of Second Batch of Records (4.12.23)
- Ex. 19 - Email from J. Van Kley to D. Papajcik & J. Satterfield Confirming Records Request Response is Complete (4.27.23)
- Ex. 20 – Sunny Farms Landfill Verified Complaint for Writ of Mandamus, filed with the Ohio Supreme Court

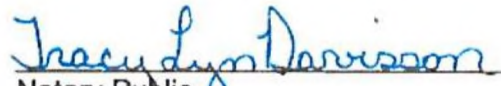
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Affiant says nothing further.



Ben Nutter
Community Engagement Specialist
WIN Waste Innovations

Sworn to before me and subscribed in my presence by Ben Nutter on this 19 day of
May, 2023.


Notary Public

TRACY LYN DAVISSON
Notary Public, State of Ohio
My Commission Expires:
June 20, 2026

Exhibit 12

Letter from Ben Nutter, WIN Waste Innovations' Community Engagement Specialist, to the Board (Sept. 23, 2022)

SENECA COUNTY
GENERAL HEALTH
DISTRICT



Public Health
Prevent. Promote. Protect

SENECA COUNTY GENERAL HEALTH DISTRICT

71 S. Washington Street, Suite 1102, Tiffin, Ohio 44883
419-447-3691 – 1-800-698-3691 – FAX: 419-448-5782
Fostoria Satellite Office: 419-435-4401 – FAX: 419-435-3024
Visit us on the web: www.senecahealthdept.org

Anne Goon, MS, RD, LD, Health Commissioner

PUBLIC RECORDS REQUEST

Request was made: In Writing By Phone E-mail In Person

Date of Request: 9/23/22 Time of Request: _____

Name of Designee Receiving Request: Austin Nainiger, Austin Nainiger

Name of Applicable Records Custodian: _____

Name of Requestor (optional): WIN WASTE INNOVATIONS

Contact Information (optional): BEN NUTTER BNUTTER@WIN-WASTE.COM

Information being requested: SEE ATTACHED

Record to be received by Requestor by:

U.S. Mail - Address: _____

E-mail - E-mail Address: BNUTTER@WIN-WASTE.COM

In Person - Date of Pick-up: WHEN AVAILABLE

Fax - Fax Number: _____

Medium of Request: Physical Inspection Paper Copy E-mail Computer Disk

Another format – please specify: _____

Amount Due: \$ _____ Amount Paid (due in advance): \$ _____

Date Request Completed: _____ Completed by: _____

Date Copy of Records Given to Requestor: _____

Please provide all documents and records, including those in printed hard copy, electronic and digital (for example email, cell and smart phone texts) form and all voice records, recordings and transcripts of such that have been prepared or received by the SCGHD; its board of directors, trustees, officers and employees; third parties retained by the SCGHD, its directors, trustees, officers and employees; or third parties who operate at the direction of, or within the personal knowledge of, the SCGHD, its directors, trustees, officers and employees that pertain to, mention or concern in any way Sunny Farms Landfill, Sunny Farms Landfill LLC, Win Waste Innovation LLC, Tunnel Hill Partners, and any officer, director, employee, former employee or contractor to Sunny Farms Landfill of such entities.

Deb Anderson

Exhibit 13

Verified Amended Complaint for Mandamus Relief, *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.) (June 7, 2023)

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
WIN WASTE INNOVATIONS OF)
SENECA COUNTY LLC)
FORMERLY KNOWN AS)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Case No. 2023-0617

Relator,)

v.)

ORIGINAL ACTION
IN MANDAMUS

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.

VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF

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*Attorneys for Relator WIN Waste
Innovations of Seneca County LLC*

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
 WIN WASTE INNOVATIONS OF)
 SENECA COUNTY LLC)
 FORMERLY KNOWN AS)
 SUNNY FARMS LANDFILL LLC) **Case No. 2023-0617**
 12500 W County Rd 18)
 Fostoria, OH 44830)

Relator,

v.

SENECA COUNTY BOARD OF)
 HEALTH)
 71 S. Washington Street)
 Tiffin, OH 44883)

**ORIGINAL ACTION
IN MANDAMUS**

Respondent.

VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF

INTRODUCTION & OVERVIEW OF REQUESTED RELIEF

1. Relator WIN Waste Innovations of Seneca County LLC, formerly known as Sunny Farms LLC (“Sunny Farms”), operates a municipal solid waste facility in Seneca County, Ohio (the “landfill” or the “facility”). To avoid confusion with prior filings, Relator and its facility will continue to be referred to as “Sunny Farms” for the purpose of this suit.

2. The facility has been in existence since approximately 1970. Each year, Sunny Farms must renew its operating license with Respondent Seneca County Board of Health (the

“Board”). Sunny Farms has applied for and ultimately received its annual operating license as required every year until recently.

3. Under settled Ohio law, the Board must renew Sunny Farms’ license to operate the facility if—as is the case here—Sunny Farms is in “substantial compliance” with Ohio’s environmental laws and regulations applicable to operation of a landfill and meets other criteria established for issuance of a license in Ohio Administrative Code (“OAC”) 3745-501-15(A). Further, the Board may deny a license only on four (4) grounds as set forth in OAC 3745-501-15(B). It is undisputed that Sunny Farms meets the criteria in OAC 3745-501-15(A) and Ohio EPA has determined that Sunny Farms is in “substantial compliance.” It is further undisputed that none of the four grounds for denial in OAC 3745-501-15(B) exist to deny Sunny Farms its license.

4. Sunny Farms is therefore entitled to a 2023 operating license. The Board of Health has no discretion to determine otherwise or override Ohio EPA’s finding that Sunny Farms is in substantial compliance. *See Fairfield Sanit. Landfill, Inc. v. Fairfield Cty. Dist. Bd. of Health*, 68 Ohio App.3d 761, 775, 589 N.E.2d 1334 (10th Dist.1990) (holding that a solid waste disposal facility may not be denied an operating license if it is in substantial compliance with the law and the facility is “entitled to rely upon the EPA’s determination of substantial compliance, and the board of health has no discretion to review, reverse, or override the EPA determination”).

5. In issuing the annual license to Sunny Farms, the Board is subject to the requirements of the Open Meetings Act. Because the Board is a public body, “[a]ll meetings of [the Board] are ... to be public meetings open to the public at all times.” Ohio Revised Code (“R.C.”) § 121.22(C). Any “formal action adopted in an open meeting *that results from deliberations in a meeting not open to the public is invalid*” unless specific enumerated exceptions apply. R.C. § 121.22(H) (emphasis added). *The Board is therefore required to*

publicly deliberate the license and any conditions it attaches to the license, or the license is invalid. In addition, the party who was denied the open meeting is “*irrebuttably presumed*” to suffer “*[i]rreparable harm and prejudice*” as a result of the denial. R.C. § 121.22(I)(3) (emphasis added).

6. Through a combination of actions and inaction, the Board violated and perverted the requirements of Ohio law that dictate when and how an annual operating license must be issued. First, the Board failed to timely act on Sunny Farms’ license application within 90 days as mandated by Ohio EPA’s regulations. *See* OAC 3745-501-20(C)(4)(a). Second, the Board issued a Notice of Intent to Deny (“the Notice”) Sunny Farms’ 2023 operating license *without explanation*. *See* Ex. 4 attached to the Affidavit of Brian J. Ezyk (the “Ezyk Aff.”). Third, the Board violated Ohio law by refusing, through inaction, to set and conduct a legally required hearing or issue a final decision on Sunny Farms’ license application. *See* Ex. 5 attached to the Ezyk Aff. Fourth, after Sunny Farms filed a verified complaint for writ of mandamus in this Court on May 10, 2023, the Board violated the Open Meetings Act when it finally issued the 2023 license but with 25 conditions without any discussion or deliberation in an open meeting. *See* Ex. 2 attached to the Affidavit of Ben Nutter (the “Nutter Aff.”). Any deliberations on the conditions occurred in a closed executive session held on May 25, 2023, shrouding the Board’s acts in secrecy. *See* Nutter Aff., ¶ 4(b)-(e).

7. Sunny Farms respectfully seeks relief from this Court in the form of a writ to require the Board to issue the license to which Sunny Farms is entitled as a matter of law *following public deliberations*. Under the Open Meetings Act, Sunny Farms has a “clear legal right” to an open meeting regarding any conditions imposed on its license, and the Board has a “clear legal duty” to provide that open meeting. The undisputed facts grant the Board no discretion. Issuance of the

2023 license and any conditions to Sunny Farms following public deliberation is mandatory as a matter of law.

JURISDICTION AND VENUE

8. Jurisdiction and venue are proper pursuant to Article IV, Section 2(B)(1) of the Ohio Constitution and R.C. § 2731.02.

PARTIES

9. WIN Waste Innovations of Seneca County LLC is an entity organized under the laws of Ohio and operates a municipal solid waste landfill located at 12500 W County Rd 18, Fostoria, Seneca County, OH 44830.

10. The Seneca County General Health District (the “Health District”) is an approved health district under R.C. § 3734.08. The Board, as the Health District’s governing body, is authorized by the Director of the Ohio Environmental Protection Agency (the “Ohio EPA”) to administer the Solid and Infectious Waste and Construction & Demolition Debris Programs pursuant to Ohio EPA’s annual survey dated May 18, 2022. *See* Ex. 5 attached to the Ezyk Aff.; *see also* R.C. §§ 3734.07; 3734.08.

11. The Board’s responsibilities include licensing and inspecting municipal solid waste landfills within its district.

12. The Board is a “public body” under the Open Meetings Act. R.C. § 121.22(B)(1)(a). Under the Act, “[a]ll meetings of any public body are ... to be public meetings open to the public at all times.” R.C. § 121.22(C).

OVERVIEW OF OHIO’S SOLID WASTE PROGRAM

13. In Ohio, municipal solid waste landfills must obtain and renew an annual operating license, either with the Ohio EPA or, if there is one, with the board of health of an approved district.

To receive a renewed license, the landfill must timely submit a complete application by September 30 each year. Ohio EPA's solid waste regulatory framework is designed to give the regulated community the predictability of a properly functioning, environmentally protective legal scheme.

14. Certain criteria must be met for an approved board to issue or deny a landfill operating license. These criteria are specifically outlined in OAC 3745-501-15. Where all the administrative criteria have been met (*i.e.*, the license application is complete, the landfill owner secures the appropriate authorizations and approvals, the landfill has provided financial assurance, etc.) the key consideration upon renewal is whether the landfill is in substantial compliance with applicable environmental laws. If the landfill is in substantial compliance, the board must issue the license. If a board acts contrary to Ohio EPA's finding of substantial compliance, the board's action will be overturned as unlawful and unreasonable by ERAC. *See Fairfield Sanitary Landfill, Inc.*, 68 Ohio App.3d at 769.

15. If an approved board intends to deny the license (and there are only four legal grounds upon which a board may deny a license), it must first issue a notice of intent to deny. Then, upon the applicant's request within 30 days of receipt of the notice, the board must hold a hearing in accordance with R.C. § 3709.20. Following the hearing, the board must issue a final order approving or denying the license. *See* OAC 3745-500-120(D)(1)(d).

16. Following the issuance of the board's final order, the applicant can appeal to ERAC. *Id.* But only the board's final order is an action that may be appealed to ERAC. *Id.* ("A copy of the final action of the approved board of health regarding the denial or revocation of the license . . . with a statement of how and within what time period the final action may be appealed to the environmental review appeals commission shall be sent by certified mail . . .").

17. Because the Board is a public body, any “formal action adopted in an open meeting *that results from deliberations in a meeting not open to the public is invalid* unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section.” R.C. § 121.22(H). (emphasis added).

18. If the board intends to deny the facility its license, the board must “at a minimum” provide the facility with a (1) notice of its intent to deny, (2) a hearing upon request, if requested within 30 days of the notice, and (3) a copy of the board’s final decision, which may then be appealed to ERAC. *See* OAC 3745-500-120(D). Each of these steps must be completed within the 90-day window referenced above. *See* OAC 3745-501-20(C)(4)(a).

19. These statutory procedures allow transparency, predictability, and certainty for both the public and landfill owners and operators to obtain timely review and action on their annual operating licenses. While Ohio EPA’s rules allow Sunny Farms to continue operating under its existing 2022 license while its 2023 application is pending a final action, the impact and long-term effect of the Board’s unlawful actions on all stakeholders override the short-term benefit of such rules.

20. Solid waste landfills must secure renewed operating licenses every year, year after year. Should regulatory boards be permitted to blatantly violate state law as in the present case, such permissive action will further subvert longstanding Ohio law and Ohio EPA’s regulations governing annual operating licenses. The unlawful action of the Board denies the regulated community (*i.e.*, Sunny Farms) and the public the right of certainty and the predictability of a properly and orderly-functioning environmental regulatory framework. Nowhere does Ohio law authorize a regulatory body to act unlawfully and, as a result, illegally abuse a law-abiding member

of the regulated community or hide from the public its discussions and deliberations. The relief requested in this Verified Amended Complaint seeks the intervention of this Court to prevent such abuse in the present case and to discourage similar unlawful behavior in the future.

21. In sum, this case concerns the Board's attempt to sidestep Ohio law and pervert the long-established Ohio EPA regulatory scheme by delaying issuance of Sunny Farms' license and then shielding from the public deliberations when the license with unreasonable conditions was finally issued.

STATEMENT OF FACTS

22. Environmental permits and operating licenses issued in a lawful, timely and predictable manner are the business life blood of waste management facilities in Ohio such as Sunny Farms. During COVID-19, the State of Ohio designated landfill facilities as indispensable businesses. See Dir. of Health Amy Acton, *Director's Stay at Home Order* (March 22, 2020), <https://governor.ohio.gov/static/DirectorsOrderStayAtHome.pdf> (last visited May 8, 2023) (designating solid waste and recycling collection and removal as "Essential Infrastructure").

23. The unlawful actions by the Board have and continue to cause significant cash expense and enterprise value damage to the business of Sunny Farms, its parent company, and investors.

24. Sunny Farms has been in operation for almost five decades. The landfill operates in an environmentally protective manner as confirmed by Ohio EPA's environmental permitting actions and its intensive regulatory scrutiny. Sunny Farms has applied for and ultimately received its annual operating license as required every year until now.

25. During 2022, Sunny Farms operated the landfill in compliance with Ohio's environmental laws and regulations. This fact is undisputed. The Board conducted 31 inspections

of the landfill in 2022. *See* Ex. 6 attached to the Ezyk Aff. During these inspections, the Board did not identify a single deviation from applicable rules at the landfill and issued zero notices of violations to Sunny Farms in 2022. *Id.*

26. Sunny Farms timely submitted its complete license application on September 27, 2022, which required the Board to issue or deny the license within 90 days (*i.e.*, by December 26, 2022) pursuant to OAC 3745-501-20(C)(4)(a). *See* Ex. 1 attached to the Ezyk Aff.

27. From the date of Sunny Farms' application submittal to present, the Board has not alleged a single deficiency in Sunny Farms' application or a scintilla of evidence to show Sunny Farms failed to meet any standard necessary to secure its operating license.

28. On November 23, 2022, an Ohio EPA representative informed the Board that Sunny Farms is in "substantial compliance" with environmental regulations. Specifically, the Ohio EPA Division of Materials and Waste Management stated that it "does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance." *See* Ex. 2 attached to the Ezyk Aff.

29. On December 13, 2022, a Health District employee advised Sunny Farms that certain conditions to the 2023 license were expected to be considered by the Board. *See* Ex. 7 attached to the Ezyk Aff.

30. On December 15, 2022, Sunny Farms sent a letter to the Board outlining its disagreement with the conditions to be considered. *Id.* In the letter, Sunny Farms stated that it believes the Board's proposed conditions were unreasonable or unlawful and not within the scope of the Board's authority. *Id.*

31. On December 29, 2022, the Board held a special meeting regarding Sunny Farms' license renewal. Consistent with the "substantial compliance" finding by Ohio EPA, the Board's own employees and its outside counsel agreed that the Board should grant Sunny Farms' 2023 License. *See* December 29, 2022 Board Meeting Minutes, Ex. 3 attached to Ezyk Aff. ("No Notices of Violation have been issued against Sunny Farms Landfill in 2021 or 2022 by the Health District for non compliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there are no violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. ***The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license.***") (Emphasis added).

32. Ignoring the recommendations of Ohio EPA and the Board's own staff and leadership, the Board, with no reasoning provided, voted on December 29, 2022 to issue a notice of intent to deny the license. *Id.*

33. Following the special meeting on December 29, 2022, and eight days after the Board was required by law to issue or deny the license, the Board issued the Notice on January 3, 2023, a total of 98 days after Sunny Farms submitted its renewal application. *See* Ex. 4 attached to the Ezyk Aff. The Notice provided no explanation of a legal or factual basis as to why the Board intended to deny Sunny Farms' license.

34. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. § 3709.20 and OAC 3745-500-120. *See* Ex. 5 attached to the

Ezyk Aff. Sunny Farms requested the appointment of a hearing examiner, a discovery schedule, and a thoughtful procedure for addressing the Board's Notice.

35. Since sending the Request for Hearing, Sunny Farms has reached out to the Board on multiple occasions to request appointment of a hearing examiner and a procedure for addressing the Notice. Sunny Farms has also repeatedly requested an explanation from the Board as to why it issued the Notice. The Board has refused to respond to Sunny Farms' requests.

36. On April 11, 2023, Sunny Farms apprised Ohio EPA of the Board's ongoing violations and its failure to act on Sunny Farms' 2023 license. Sunny Farms also requested that Ohio EPA determine that the Board is not eligible to remain on Ohio EPA's list of approved boards of health because the Board is not substantially complying with Ohio's solid waste laws and regulations. *See Ex.7* attached to the Ezyk Aff. As further described in the letter, Sunny Farms provides details regarding the unlawful conduct of the Board and the unethical behavior exhibited by certain Board members. *Id.*

37. The Board's Health Commissioner, Anne Goon -- who had decades of experience in a health commissioner role -- made the determination at the December 29, 2022 meeting that Sunny Farms' license should be renewed. *See Ex. 3* attached to the Ezyk Aff. Four months later, on April 27, 2023, the Board dismissed Ms. Goon. The Board offered no reasoning or explanation for its abrupt decision to terminate Ms. Goon. *See Ex. 8* attached to the Ezyk Aff. (April 28, 2023 Toledo Blade article reporting on the termination of Ms. Goon).

38. As a consequence of the Board's failure to take final action, Sunny Farms was forced to file a verified complaint for a writ of mandamus in this Court on May 10, 2023.

39. After Sunny Farms filed its verified complaint, the Board held one of its regularly scheduled meetings on May 25, 2023. The Board opened the meeting and promptly moved to

executive session. Upon exiting from the executive session, the Board voted to issue Sunny Farms’ 2023 annual operating license with conditions without public discussion or deliberation of the license or the terms and conditions of the license. *See* Nutter Aff., ¶ 4(a)-(e).

40. The next day, on May 26, Acting Health Commissioner Laura Wallrabenstein Acting issued the 2023 license with 25 conditions. *See* Ex. 2 to the Nutter Aff. No public discussion or deliberation of the conditions on Sunny Farms’ license was ever held by the Board. *See* Nutter Aff., ¶ 4(e).

41. None of the new license conditions had ever been disclosed to Sunny Farms prior to the license at issue and have never been discussed in any Board of Health open meeting. *See* Nutter Aff. *See* Nutter Aff., ¶ 4(f). The conditions span a broad scope of environmental matters concerning the landfill, including air, water, groundwater, solid waste, and transportation matters. *See* Ezyk Aff., ¶ 4(e).

42. None of these conditions have ever been imposed on the landfill in prior licenses. Sunny Farms maintains many, if not all, of the conditions exceed the Board’s authority and intends to pursue those arguments through an appeal to the Environmental Review Appeals Commission (“ERAC”) in the ordinary course. *See* Ezyk Aff., ¶ 4(d)-(e).

43. The Board’s actions on the license and each condition are all unlawful for the separate reason that they were issued in violation of the Open Meetings Act, which renders invalid formal action that results from deliberations in a closed meeting. R.C. § 121.22(H).

LAW CONCERNING WRIT OF MANDAMUS

44. To be entitled to a writ of mandamus a relator must establish (1) that it has a clear legal right to the relief prayed for; (2) that the respondent has a clear legal duty to perform the

requested act, and (3) that relator has no plain and adequate remedy at law. *See, e.g., State ex rel. Lane v. City of Pickerington*, 130 Ohio St. 3d 225, 2011-Ohio-5454, 957 N.E.2d 29, ¶ 10.

SUNNY FARMS’ RIGHT TO A WRIT OF MANDAMUS AGAINST THE BOARD

45. The Board is a “public body” under the Open Meetings Act. R.C. § 121.22(B)(1). It is the Board of a “county” – Seneca County – because the Board is the governing body of the Seneca County General Health District. R.C. § 121.22(B)(1)(a).

46. The Act sets forth the general rules that “[a]ll meetings of any public body are ... to be public meetings open to the public at all times.” R.C. § 121.22(C). The Act provides that “[a]ll meetings of any public body are declared to be public meetings open to the public at all times.” R.C. § 121.22(C). Under the Act, a “[m]eeting” means “any prearranged discussion of the public business of the public body by a majority of its members.” R.C. § 121.22(B)(2).

47. Under the Act, a “resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” R.C. § 121.22(H). And any “formal action adopted in an open meeting *that results from deliberations in a meeting not open to the public is invalid* unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section.” *Id.* (emphasis added). In addition, the party who was denied the open meeting is “*irrebuttably presumed*” to suffer “*[i]rreparable harm and prejudice*” as a result of the denial. R.C. § 121.22(I)(3) (emphasis added).

48. Under the Act, deliberations regarding the Board’s decision to issue Sunny Farms’ license and any associated conditions on the license are matters of “public business” that must held in a public meeting. The Board could only have imposed a condition on the license if the condition was “necessary to protect public health and safety and the environment and to ensure that” Sunny

Farms would “comply with” applicable law. OAC 3745-501-20(C)(5). The public had a right to observe deliberations by the Board in connection with any conditions on Sunny Farms’ license.

49. The Board violated the Act when it discussed and deliberated on the general concept of imposing conditions and the specific conditions themselves on Sunny Farms’ license in closed meetings only. No exception under the Act applies to permit the Board to issue the license with conditions following only closed deliberations. Even if the Board initially entered a closed session to discuss the Sunny Farms mandamus action, it was required to move to a public session to deliberate the substantive matter of the license itself and any conditions before taking formal action.

50. Accordingly, under the Act, the Board’s formal action issuing a license with conditions resulting from deliberations in only closed sessions is invalid. R.C. § 121.22(H). Sunny Farms has a clear legal right to a public meeting deliberating the conditions on its license, and the Board has a clear legal duty to hold that public meeting.

51. Furthermore, as the board of health in a health district on the Director of Ohio EPA’s approved list, the Board has a clear legal duty to issue or deny Sunny Farms’ license renewal within 90 days of receiving the application pursuant to OAC 3745-501-20(C)(4)(a). Because the Board’s issuance of the license is invalid under the Open Meetings Act, the Board also remains in violation of the law based on its failure to take valid final action within the required time period.

52. It is undisputed that Sunny Farms meets the criteria under OAC 3745-501-15(A) for its license renewal application. Because (1) Sunny Farms meets all the criteria in OAC 3745-501-15(A); (2) the Board has identified no basis for denial of the license under OAC 3745-501-15(B); and (3) Ohio EPA has determined that Sunny Farms is in substantial compliance, the Board has a clear legal duty to issue the license requested in Sunny Farms’ application.

53. Because the Board is required to issue or deny Sunny Farms' license within 90 days of receiving the application under OAC 3745-501-20(C)(4)(a) and has failed to do so properly by that deadline, the Board has a clear legal duty to take immediate final action on Sunny Farms' license by properly issuing or denying the license. The Board is in continuing violation of Ohio's environmental protection laws based on its failure to take valid action following public deliberation.

54. Other than action by order of this Court, Sunny Farms has no plain and adequate remedy at law to compel the Board to comply with the Open Meetings Act in validly issuing the 2023 license following public deliberation. While Sunny Farms would ordinarily file an appeal to ERAC under R.C. § 3745.04 to contest unreasonable conditions on the license, nothing in ERAC's jurisdictional statutes suggests it can compel compliance with the Open Meetings Act. *See* R.C. § 3745.04.

55. Ohio law does not allow the Board to simply sidestep the timeframes and public deliberations required by Ohio law, and a writ of mandamus is the appropriate remedy to correct the Board's unlawful and noncompliant conduct.

PRAYER FOR RELIEF

WHEREFORE, Relator Sunny Farms respectfully requests that this Court issue:

A peremptory writ of mandamus ordering the Board to, by a date certain, issue the 2023 license, because Sunny Farms is so entitled as a matter of law, following public deliberations in an open meeting, as required by the Open Meetings Act.

If the Court decides not to grant a peremptory writ, Sunny Farms respectfully requests that the Court issue an alternative writ allowing Sunny Farms the opportunity to present further evidence demonstrating its entitlement to a writ of mandamus.

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Amended Complaint was served by e-mail upon the following this 7th day of June, 2023.

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**AFFIDAVIT OF BRIAN EZYK IN SUPPORT OF RELATOR'S
VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF**

I, Brian Ezyk, Vice President of Landfills for WIN Waste Innovations (“WIN”), and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Verified Amended Complaint on the basis of personal knowledge.
2. In my role as Vice President of Landfills, I am responsible for overseeing the operations of the landfill owned and operated by WIN Waste Innovations of Seneca County LLC (formerly known as Sunny Farms Landfill LLC and referred to herein for ease of reference as “Sunny Farms”) and ensuring that the landfill is in compliance with Ohio’s environmental laws and regulations.
3. I have reviewed the Verified Amended Complaint in this action.
4. The facts set forth below and in the Verified Amended Complaint are true based upon my personal knowledge and my review of the public record.
 - a. I attended the Seneca County Board of Health (the “Board”) meeting on May 25, 2023. There were no public deliberations or discussions regarding Sunny Farms’ license or conditions at this meeting.
 - b. On May 26, 2023, Acting Health Commissioner, Laura Wallrabenstein, issued Sunny Farms’ 2023 license with 25 conditions.

- c. The license conditions imposed by the Board are unreasonable and unlawful, such that they can and will cause irreparable harm to Sunny Farms.
 - d. Sunny Farms maintains that most, if not all, of the conditions exceed the Board's authority and intends to pursue those arguments through an appeal in the ordinary course.
 - e. The conditions span a broad scope of environmental matters concerning the landfill, including air, water, groundwater, solid waste, and transportation matters. None of these conditions have ever been imposed on Sunny Farms in a license before.
 - f. The conditions also exceed industry standards and impose unduly burdensome requirements. For example, in addition to being beyond the scope of the Board's authority, requiring rail cars to be water-tight is not the industry standard for the transport of construction and demolition debris.
5. The attached exhibits are true and correct copies of what they purport to be:
- Ex. 1 - License Application (9.27.22)
 - Ex. 2 - Email from M. Reiser, Ohio EPA, to L. Wallrabenstein, SCGHD (11.23.22)
 - Ex. 3 - Board Special Meeting Minutes (12.29.22)
 - Ex. 4 - Notice of Intent to Deny (1.3.23)
 - Ex. 5 - Request for Hearing (1.19.23)
 - Ex. 6 - Letter to D. Devine (2.9.23)
 - Ex. 7 - Letter to Director A. Vogel *et al.*, Ohio EPA (4.11.23)
 - Ex. 8 - Toledo Blade Article (4.28.23)

Affiant says nothing further.



Brian Ezyk
Vice President of Landfills
WIN Waste Innovations

Sworn to before me and subscribed in my presence by Brian Ezyk on this 7th day of June, 2023.



Notary Public



DANIEL PESANTE
Notary Public
State of Ohio
My Comm. Expires
December 1, 2025



B.Nutter Affidavit for Amended Complaint 6.7.2023.pdf

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E-Signature Summary

E-Signature 1: Benjamin E Nutter (BEN)

June 07, 2023 14:46:35 -8:00 [FC7B97005098] [45.19.171.87]
 bnutter@win-waste.com (Principal) (ID Verified)

E-Signature Notary: Suzanne Marie McFarland (smm)

June 07, 2023 14:46:35 -8:00 [EF3AE3818DD9] [163.182.17.113]
 sue.mcfarland@quirepb.com
 I, Suzanne Marie McFarland, did witness the participants named above electronically sign this document.



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**AFFIDAVIT OF BEN NUTTER IN SUPPORT OF RELATOR'S
VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF**

I, Ben Nutter, Community Engagement Specialist for WIN Waste Innovations (“WIN”), and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Complaint on the basis of personal knowledge.
2. I am the Community Engagement Specialist for WIN. In my role, I am responsible for community engagement and government affairs for WIN’s landfill facilities, including the WIN Waste Innovations of Seneca County LLC landfill (formerly known as “Sunny Farms Landfill” and referred to herein for ease of reference as “Sunny Farms”) in Fostoria, Ohio.
3. I have reviewed the Amended Complaint in this action.
4. The facts set forth below and in the Amended Complaint are true based upon my personal knowledge and my review of the public record.
 - a. I attended the Seneca County Board of Health (“Board”) meeting held on May 25, 2023.
 - b. Immediately following the Pledge of Allegiance, the Board went into executive session. The reason for the executive session the Board provided was to discuss “pending legal issues.”
 - c. The Board was in executive session for approximately two hours.

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- d. Once the Board recommenced the public meeting, a Board member made a motion to vacate the Board's Notice of Intent to deny Sunny Farms' 2023 license and issue a new license with special conditions. This motion was seconded and unanimously approved.
 - e. Prior to this motion, the Board neither publicly discussed nor deliberated the license or its conditions.
 - f. None of the new license conditions had ever been disclosed to Sunny Farms prior to the license at issue and had never been discussed in any prior Board of Health meeting.
 - g. Thereafter, on May 26, the Acting Health Commissioner, Laura Wallrabenstein, issued the 2023 license with 25 conditions. The Board did not disclose these conditions to Sunny Farms prior to issuing this license.
 - h. In my previous experience, the Board normally issues Sunny Farms its annual license following an open meeting with public dialogue.
5. The attached exhibits are true and correct copies of what they purport to be:
- a. Exhibit 1 – Board of Health Meeting Agenda dated May 25, 2023.
 - i. Sunny Farms and the landfill facility are not mentioned in the Board's agenda for this meeting.
 - b. Exhibit 2 – License with Conditions issued May 26, 2023.

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F513B888-A392-4A23-8080-FD753E1D97EB --- 2023/06/07 14:03:04 -8:00 --- Remote Notary



Affiant says nothing further.

Benjamin E Nutter
Signed on 2023/06/07 14:48:35 -0000

Ben Nutter

STATE OF OHIO:
COUNTY OF WARREN:

Sworn and subscribed before me this 7th day of June, 2023 by Ben Nutter, via online notarization pursuant to Ohio Revised Code §147.60 et seq. This certificate pertains to an electronic notarial act performed with the principal appearing online using audio-video communication. An oath or affirmation was administered to the signer with regard to the notarial act.



Suzanne Marie McFarland
Ohio Online Notary Public
Location: Mason, Ohio
My Commission Expires: March 29, 2026



Notarial act performed by audio-visual communication

F513B888-A392-4A23-8080-FD753E1D97EB --- 2023/06/07 14:03:04 -8:00 --- Remote Notary



Exhibit 14

Tom Henry, *\$54 million landfill system seeks to eliminate odors, reduce emissions at Sunny Farms*, TOLEDO BLADE (June 8, 2023)



\$54M landfill system seeks to eliminate odors, reduce emissions at Sunny Farms



TOM HENRY ✓

The Blade

thentry@theblade.com 

JUN 8, 2023

5:30 PM

FOSTORIA — The owner-operator of the Sunny Farms Landfill said this week it has finished construction of a gas-treatment system that, when fully operational in about 90 days, will remove nearly all of the odor-causing hydrogen sulfide from the landfill’s gas stream while also significantly reducing greenhouse gases.

WIN Waste Innovations said it put nearly \$54 million into the system, the company’s largest investment in that landfill since taking control of it in 2019. The system began operating Monday and is undergoing a series of tests ordered by the Ohio Environmental Protection Agency for three months.

“We’ll no longer be releasing hydrogen sulfide,” said Ben Nutter, a former Seneca County commissioner now working for WIN Waste Innovations. “That is the goal, to have zero odors.”

Hydrogen sulfide is the pollutant largely blamed for rotten egg-like odors that resulted in hundreds of complaints a few years ago.

WIN Waste installed the gas-collection system to comply with a 2019 consent order issued by the Ohio EPA after the property transfer. That order required what's known as best available control technology, Mr. Nutter said.

The system is designed to convert hydrogen sulfide into elemental sulfur, a product that can be marketed to the agricultural industry. It also is designed to reduce sulfur dioxide emissions 98 percent, the company said.

Sulfur dioxide is a pollutant associated with acid rain that can travel miles and damage trees, plants, and waterbodies, [according to the U.S. EPA](#).

It also can react with other compounds in the atmosphere to form fine particles that reduce visibility and create haze, the federal agency said.

Mr. Nutter said the new system is “a major step in getting us to where we need to be.”

“We’re really excited about it,” he said. “It’s really a cool thing.”

James Lee, Ohio EPA spokesman, told The Blade in an email on Thursday that the landfill’s hydrogen sulfide removal system “was custom designed and fabricated to address the unique emission challenges at Sunny Farms.”

He confirmed emissions will be reduced by 98 percent.

“This is a milestone Ohio EPA has been anticipating for several years as a significant step in the process to curb both H₂S and SO₂ emissions from the landfill,” Mr. Lee said. “Ohio EPA’s air team inspected the new system on June 6 and verified that the equipment is treating all landfill gas and removing more than the required amount of hydrogen sulfide prior to flaring the gas in a new enclosed flare.”

He said the upgrades “have been effective in reducing odors and SO₂ emissions.”

The Seneca County General Health District warned residents in an announcement on April 17 about how installing new equipment might cause temporary odors. It said the project involved drilling and trenching into soil cover and previously placed waste to install the gas-collection

pipng, but said the odors were not expected to persist beyond the anticipated six-week construction phase.

The local health district announced in late May that it was taking bid proposals for its own air-monitoring stations near the landfill through July 13.

“The scope of work consists of providing all materials and labor to install the semi-permanent monitoring stations at two pre-selected rural locations adjacent to county roadways,” a district announcement states. “The vendor will be expected to enter into a contract to provide for operation and maintenance of these stations for a period of three years.”

It set a June 15 deadline for questions about potential submittals.

Jack Van Kley, a Columbus-based attorney the health district has hired for legal representation and also has designated as its sole spokesman on Sunny Farms matters, said that agency has no comment about the landfill’s new gas-collection system.

The company anticipates a follow-up to its recent Ohio EPA hearing over its expansion request, Mr. Nutter said.

Several residents objected at the first one, attended by about 200 people in Fostoria on May 11. Many of those in the audience were WIN Waste employees wearing shirts supporting the request.

The Sunny Farms Landfill has drawn controversy for years.

It is a major site for out-of-state waste, especially from New York and other states out East. The out-of-state waste is allowed under the Interstate Commerce Clause.

In 1991, the U.S. Supreme Court declared Ohio’s practice of charging higher fees for out-of-state trash was unconstitutional because it violated the Constitution’s Interstate Commerce Clause that promotes free trade across the states.

The company plans to make a break from the past and eventually have the landfill known as WIN Waste Innovations of Seneca County, Mr. Nutter said.



Tom Henry

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EXHIBIT C

Verified Complaint for Mandamus Relief,
*State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board
of Health*, Case No. 2023-0617 (Ohio S. Ct.) (May 10, 2023)

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Relator,)

v.)

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.)

Case No. _____

Judge _____

ORIGINAL ACTION
IN MANDAMUS

VERIFIED COMPLAINT FOR MANDAMUS RELIEF

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*Attorneys for Relator Sunny Farms
Landfill LLC*

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Relator,)

v.)

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.)

Case No. _____

Judge _____

ORIGINAL ACTION
IN MANDAMUS

VERIFIED COMPLAINT FOR MANDAMUS RELIEF

INTRODUCTION & OVERVIEW OF REQUESTED RELIEF

1. Relator Sunny Farms LLC (“Sunny Farms”) operates a municipal solid waste facility in Seneca County, Ohio (the “landfill” or the “facility”). Each year, Sunny Farms must renew its operating license with Respondent Seneca County Board of Health (the “Board”).
2. The facility has been in existence since approximately 1970. Sunny Farms has applied for and ultimately received its annual operating license as required every year until now.
3. Under settled Ohio law, the Board must renew Sunny Farms’ license to operate the facility if—as is the case here—Sunny Farms is in “substantial compliance” with Ohio’s environmental laws and regulations applicable to operation of a landfill and meets other criteria established for issuance of a license in Ohio Administrative Code (“OAC”) 3745-501-15(A).

Further, the Board may deny a license only on four (4) grounds as set forth in OAC 3745-501-15(B). It is undisputed that Sunny Farms meets the criteria in OAC 3745-501-15(A) and Ohio EPA has determined that Sunny Farms is in “substantial compliance.” It is further undisputed that none of the four grounds for denial in OAC 3745-501-15(B) exist to deny Sunny Farms its license.

4. Sunny Farms is therefore entitled to a 2023 operating license. The Board of Health has no discretion to determine otherwise or override Ohio EPA’s finding that Sunny Farms is in substantial compliance. *See Fairfield Sanit. Landfill, Inc. v. Fairfield Cty. Dist. Bd. of Health*, 68 Ohio App.3d 761, 775, 589 N.E.2d 1334 (10th Dist.1990) (holding that a solid waste disposal facility may not be denied an operating license if it is in substantial compliance with the law and the facility is “entitled to rely upon the EPA’s determination of substantial compliance, and the board of health has no discretion to review, reverse, or override the EPA determination”).

5. Through a combination of actions and inaction, the Board has violated and perverted the requirements of Ohio law that dictate when an annual operating license must be issued. First, the Board failed to timely act on Sunny Farms’ license application within 90 days as mandated by Ohio EPA’s regulations. *See* OAC 3745-501-20(C)(4)(a). Second, the Board issued a Notice of Intent to Deny (“the Notice”) Sunny Farms’ 2023 operating license with no legal grounds. *See* Ex. 4 attached to the Affidavit of Brian J. Ezyk (the “Ezyk Aff.”). Third, the Board continues to violate Ohio law by refusing, through inaction, to set and conduct a legally required hearing which was timely requested by Sunny Farms nearly four months ago following receipt of the Board’s Notice. *See* Ex. 5 attached to the Ezyk Aff. Fourth, the Board continues to violate Ohio law by refusing to issue a final decision on Sunny Farms’ license application.

6. The Board was required by law to issue its final order months ago. Without that final order, Sunny Farms cannot appeal. Sunny Farms cannot challenge the illegality of the

Board's Notice because the Notice is not a final action which would invoke the jurisdiction of the Ohio Environmental Review Appeals Commission ("ERAC") under Ohio Revised Code ("R.C.") § 3745.04.

7. The Board's action and inaction leaves Sunny Farms in legal purgatory. Because the Board has failed to issue a final action, or even schedule and properly conduct the hearing as required by Ohio law, Sunny Farms has no plain or adequate remedy at law but to seek relief from this Court.

8. Sunny Farms respectfully seeks relief from this Court in the form of a writ to require the Board to issue the license to which Sunny Farms is entitled as a matter of law. Sunny Farms has a "clear legal right" to its 2023 operating license, and the Board has a "clear legal duty" to grant Sunny Farms its 2023 operating license, under the Ohio law cited herein and in the accompanying Memorandum in Support. The undisputed facts grant the Board no discretion in acting on the license. In other words, issuance of the 2023 license to Sunny Farms is mandatory as a matter of law.

9. If the Court decides not to order the issuance of the license, Sunny Farms respectfully seeks relief from this Court in the form of a writ to require the Board to issue either a final, appealable action on the pending license application by a date certain or a writ to require the Board to convene a hearing by a date certain in accordance with R.C. § 3709.20 and OAC 3745-500-120(D) and subject to other procedures necessary to protect Sunny Farms' rights of due process.

JURISDICTION AND VENUE

10. Jurisdiction and venue are proper pursuant to Article IV, Section 2(B)(1) of the Ohio Constitution and R.C. § 2731.02.

PARTIES

11. Sunny Farms is an entity organized under the laws of Ohio and operates a municipal solid waste landfill located at 12500 W County Rd 18, Fostoria, Seneca County, OH 44830.

12. The Seneca County General Health District (the “Health District”) is an approved health district under R.C. § 3734.08. The Board, as the Health District’s governing body, is authorized by the Director of the Ohio Environmental Protection Agency (the “Ohio EPA”) to administer the Solid and Infectious Waste and Construction & Demolition Debris Programs pursuant to Ohio EPA’s annual survey dated May 18, 2022. *See* Ex. 5 attached to the Ezyk Aff.; *see also* R.C. §§ 3734.07; 3734.08.

13. The Board’s responsibilities include licensing and inspecting municipal solid waste landfills within its district.

OVERVIEW OF OHIO’S SOLID WASTE PROGRAM

14. In Ohio, municipal solid waste landfills must obtain and renew an annual operating license, either with the Ohio EPA or, if there is one, with the board of health of an approved district. To receive a renewed license, the landfill must timely submit a complete application by September 30 each year. Ohio EPA’s solid waste regulatory framework is designed to give the regulated community the predictability of a properly functioning, environmentally protective legal scheme.

15. Certain criteria must be met for an approved board to issue or deny a landfill operating license. These criteria are specifically outlined in OAC 3745-501-15. Where all the administrative criteria have been met (*i.e.*, the license application is complete, the landfill owner secures the appropriate authorizations and approvals, the landfill has provided financial assurance, etc.), the key consideration upon renewal is whether the landfill is in substantial compliance with applicable environmental laws. If the landfill is in substantial compliance, the board must issue

the license. If a board acts contrary to Ohio EPA's finding of substantial compliance, the board's action will be overturned as unlawful and unreasonable by ERAC. *See Fairfield Sanitary Landfill, Inc.*, 68 Ohio App.3d at 769.

16. If an approved board intends to deny the license (and there are only four legal grounds upon which a board may deny a license), it must first issue a notice of intent to deny. Then, upon the applicant's request within 30 days of receipt of the notice, the board must hold a hearing in accordance with R.C. § 3709.20. Following the hearing, the board must issue a final order approving or denying the license. *See* OAC 3745-500-120(D)(1)(d).

17. Following the issuance of the board's final order, the applicant can appeal to ERAC. *Id.* Notably, only the board's final order is an action that may be appealed to ERAC. *Id.* (“***A copy of the final action of the approved board of health*** regarding the denial or revocation of the license . . . with a statement of how and within what time period the final action ***may be appealed to the environmental review appeals commission*** shall be sent by certified mail”) (Emphasis added).

18. If the board intends to deny the facility its license, the board must “at a minimum” provide the facility with a (1) notice of its intent to deny, (2) a hearing upon request, if requested within 30 days of the notice, and (3) a copy of the board's final decision, which may then be appealed to ERAC. *See* OAC 3745-500-120(D). Each of these steps must be completed within the 90-day window referenced above. *See* OAC 3745-501-20(C)(4)(a).

19. This statutory procedure allows predictability and certainty for landfill owners and operators to obtain timely review and action on their annual operating licenses. While Ohio EPA's rules allow Sunny Farms to continue operating under its existing 2022 license while its 2023

application is pending a final action, the impact and long-term effect of the Board's unlawful actions override the short-term benefit of such rules.

20. Solid waste landfills must secure renewed operating licenses every year, year after year. Should regulatory boards be permitted to blatantly violate state law as in the present case, such permissive action will further subvert longstanding Ohio law and Ohio EPA's regulations governing annual operating licenses. The unlawful action of the Board denies the regulated community (*i.e.*, Sunny Farms) the right of certainty and the predictability of a properly and orderly-functioning environmental regulatory scheme. Nowhere does Ohio law authorize a regulatory body to act unlawfully and, as a result, illegally abuse a law-abiding member of the regulated community. The relief requested in this Verified Complaint seeks the intervention of this Court to prevent such abuse in the present case and to discourage similar unlawful behavior in the future.

21. In sum, this case concerns the Board's attempt to sidestep Ohio law and pervert the long-established Ohio EPA regulatory scheme by issuing a Notice—without legal justification—and then refusing to set a hearing or to otherwise act on the Notice in order to prevent Sunny Farms from the ability to appeal.

STATEMENT OF FACTS

22. Environmental permits and operating licenses issued in a lawful, timely and predictable manner are the business life blood of waste management facilities in Ohio such as Sunny Farms Landfill. During COVID-19, the State of Ohio designated landfill facilities as indispensable businesses. *See* Dir. of Health Amy Acton, *Director's Stay at Home Order* (March 22, 2020), <https://governor.ohio.gov/static/DirectorsOrderStayAtHome.pdf> (last visited May

8, 2023) (designating solid waste and recycling collection and removal as “Essential Infrastructure”).

23. The unlawful actions by the Board are causing significant cash expense and enterprise value damage to the business of Sunny Farms, its parent company, and investors.

24. Sunny Farms has been in operation for almost five decades. The landfill operates in an environmentally protective manner as confirmed by Ohio EPA’s environmental permitting actions and its intensive regulatory scrutiny. Sunny Farms has applied for and ultimately received its annual operating license as required every year until now.

25. During 2022, Sunny Farms operated the landfill in compliance with Ohio’s environmental laws and regulations. This fact is undisputed. The Board conducted 31 inspections of the landfill in 2022. *See* Ex. 6 attached to the Ezyk Aff. During these inspections, the Board did not identify a single deviation from applicable rules at the landfill and issued zero notices of violations to Sunny Farms in 2022. *Id.*

26. Sunny Farms timely submitted its complete license application on September 27, 2022, which required the Board to issue or deny the license within 90 days (*i.e.*, by December 26, 2022) pursuant to OAC 3745-501-20(C)(4)(a). *See* Ex. 1 attached to the Ezyk Aff.

27. From the date of Sunny Farms’ application submittal to present, the Board has not alleged a single deficiency in Sunny Farms’ application or a scintilla of evidence to show Sunny Farms failed to meet any standard necessary to secure its operating license.

28. On November 23, 2022, an Ohio EPA representative informed the Board that Sunny Farms is in “substantial compliance” with environmental regulations. Specifically, the Ohio EPA Division of Materials and Waste Management stated that it “does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health

from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.” *See* Ex. 2 attached to the Ezyk Aff.

29. On December 13, 2022, a Health District employee advised Sunny Farms that certain conditions to the 2023 license were expected to be considered by the Board. *See* Ex. 7 attached to the Ezyk Aff.

30. On December 15, 2022, Sunny Farms sent a letter to the Board outlining its disagreement with the conditions to be considered. *Id.* In the letter, Sunny Farms stated that it believes the Board’s proposed conditions were unreasonable or unlawful and not within the scope of the Board’s authority. *Id.*

31. On December 29, 2022, the Board held a special meeting regarding Sunny Farms’ license renewal. Consistent with the “substantial compliance” finding by Ohio EPA, the Board’s own employees and its outside counsel agreed that the Board should grant Sunny Farms’ 2023 License. *See* December 29, 2022 Board Meeting Minutes, Ex. 3 attached to Ezyk Aff. (“No Notices of Violation have been issued against Sunny Farms Landfill in 2021 or 2022 by the Health District for non compliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there are no violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. ***The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license.***”) (Emphasis added).

32. Ignoring the recommendations of Ohio EPA and the Board’s own staff and leadership, the Board, with no reasoning provided, voted on December 29, 2022 to issue a notice of intent to deny the license. *Id.*

33. Following the special meeting on December 29, 2022, and eight days after the Board was required by law to issue or deny the license, the Board issued the Notice on January 3, 2023, a total of 98 days after Sunny Farms submitted its renewal application. *See* Ex. 4 attached to the Ezyk Aff. The Notice provides no explanation of a legal or factual basis as to why the Board intended to deny Sunny Farms’ license.

34. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. § 3709.20 and OAC 3745-500-120. *See* Ex. 5 attached to the Ezyk Aff. Sunny Farms requested the appointment of a hearing examiner, a discovery schedule, and a thoughtful procedure for addressing the Board’s Notice.

35. Since sending the Request for Hearing, Sunny Farms has reached out to the Board on multiple occasions to request appointment of a hearing examiner and a procedure for addressing the Notice. Sunny Farms has also repeatedly requested an explanation from the Board as to why it issued the Notice. The Board has refused to respond to Sunny Farms’ requests.

36. On April 11, 2023, Sunny Farms apprised Ohio EPA of the Board’s ongoing violations and its failure to act on Sunny Farms’ 2023 license. Sunny Farms also requested that Ohio EPA determine that the Board is not eligible to remain on Ohio EPA’s list of approved boards of health because the Board is not substantially complying with Ohio’s solid waste laws and regulations. *See* Ex.7 attached to the Ezyk Aff. As further described in the letter, Sunny Farms provides details regarding the unlawful conduct of the Board and the unethical behavior exhibited by certain Board members. *Id.*

37. The Board's Health Commissioner, Anne Goon -- who had decades of experience in a health commissioner role -- made the determination at the December 29, 2022 meeting that Sunny Farms' license should be renewed. *See* Ex. 3 attached to the Ezyk Aff. Four months later, on April 27, 2023, the Board fired Ms. Goon. The Board offered no reasoning or explanation for its abrupt decision to terminate Ms. Goon. *See* Ex. 8 attached to the Ezyk Aff. (April 28, 2023 Toledo Blade article reporting on the termination of Ms. Goon).

38. Through its inaction, the Board has failed to perform its indisputable lawful duty of taking final action on Sunny Farms' renewal application, including either issuing the license or scheduling a hearing on the Notice. Further, the Board has provided no legal basis for its proposed denial of Sunny Farms' license.

LAW CONCERNING WRIT OF MANDAMUS

39. To be entitled to a writ of mandamus a relator must establish (1) that it has a clear legal right to the relief prayed for; (2) that the respondent has a clear legal duty to perform the requested act, and (3) that relator has no plain and adequate remedy at law. *See, e.g., State ex rel. Lane v. City of Pickerington*, 130 Ohio St. 3d 225, 2011-Ohio-5454, 957 N.E.2d 29, ¶ 10.

SUNNY FARMS' RIGHT TO A WRIT OF MANDAMUS AGAINST THE BOARD

40. As the board of health in a health district on the Director of Ohio EPA's approved list, the Board has a clear legal duty to issue or deny Sunny Farms' license renewal within 90 days of receiving the application pursuant to OAC 3745-501-20(C)(4)(a). The Board is in violation of the law based on its failure to act. The Board's failure to issue a final action on the license prevents Sunny Farms from filing an appeal to ERAC under R.C. § 3745.04.

41. It is undisputed that Sunny Farms meets the criteria under OAC 3745-501-15(A) for its 2022 license renewal application:

- a. Sunny Farms is the owner and operator of the landfill.
 - b. Sunny Farms holds a valid permit to install under MSWL018786.
 - c. This is not an initial facility license.
 - d. All detail plans were approved by the Director of Ohio EPA pursuant to R.C. § 3734.05, as may have been applicable for any modifications of the landfill.
 - e. The landfill has secured all appropriate approvals and authorizations pursuant to R.C. §§ 3704 (Air Pollution Control) and 6111 (Water Pollution Control). Such approvals and authorizations include Sunny Farms' Title V Air Permit No. P0125384, which was under renewal in 2022 and renewed by Ohio EPA on March 1, 2023, and Sunny Farms' National Pollution Discharge Elimination System ("NPDES") Permit No. 2IN00136*DD, effective October 1, 2020 with an expiration date of September 30, 2025.
 - f. Sunny Farms submitted a complete license application using the form provided by Ohio EPA's eBusiness Center Facility License Service, thereby conforming to OAC 3745-501-10.
 - g. Closure of the facility is not required.
 - h. The complete license application was submitted on September 27, 2022 in advance of the September 30, 2022 deadline and well in advance of the December 31, 2022 deadline for which late fees apply.
 - i. Financial assurance has been established for the landfill and such documentation is maintained on file with Ohio EPA's Division of Waste Management.
 - j. All Ohio facilities owned or operated by Sunny Farms, and its parent company WIN Waste Innovations, are in substantial compliance with, or are on a legally enforceable schedule to attain compliance.
 - k. All Ohio facilities owned or operated by Sunny Farms, and its parent company WIN Waste Innovations, have maintained a history of compliance, including resolution of any administrative or judicial enforcement actions.
 - l. Sunny Farms has demonstrated sufficient reliability, expertise, and competency to operate the facility in substantial compliance with the laws of this State.
42. The Board is only permitted to deny a license on four grounds specified by OAC 3745-501-15(B). It is undisputed none of these grounds exist here. Specifically,
- a. All the criteria under 3745-501-15(A) are met.
 - b. The license application is complete and there is no notice of deficiency issued.

- c. There is no falsification of information in Sunny Farms' application.
- d. Sunny Farms has no violations of Chapter 3714 or 3734 of the Revised Code, or any rule adopted under those chapters in 2022.

43. Because (1) Sunny Farms meets all the criteria in OAC 3745-501-15(A); (2) the Board has alleged no basis for denial of the license under OAC 3745-501-15(B); and (3) Ohio EPA has determined that Sunny Farms is in substantial compliance, the Board has a clear legal duty to issue the license requested in Sunny Farms' application.

44. Because the Board is required to issue or deny Sunny Farms' license within 90 days of receiving the application under OAC 3745-501-20(C)(4)(a), and has failed to do so by that deadline, the Board has a clear legal duty to take immediate final action on Sunny Farms' license by issuing or denying the license. The Board is in continuing violation of Ohio's environmental protection laws based on its failure to act.

45. At a minimum, in accordance with OAC 3745-500-120(D)(1)(b) and R.C. § 3709.20 and appropriate due process protections and considerations, Sunny Farms has a clear legal right to a hearing on the Board's Notice.

46. The Board has a clear legal duty to conduct the requested hearing and issue a final appealable action to Sunny Farms. The Board is in continuing violation of Ohio's environmental protection laws by shirking its clear legal duty.

47. Other than action by order of this Court, Sunny Farms has no plain and adequate remedy at law to obtain its 2023 License, or in the alternative receive a final decision with findings of fact and conclusion of law from which it can appeal, or in the alternative receive the required hearing.

48. Ohio law does not allow the Board to simply refuse to act within the timeframes required by Ohio law, and a writ of mandamus is the appropriate remedy to correct the Board's unlawful and noncompliant conduct.

PRAYER FOR RELIEF

WHEREFORE, Relator Sunny Farms respectfully requests that this Court issue:

A peremptory writ of mandamus ordering the Board to either:

- (1) Issue the 2023 license because Sunny Farms is so entitled as a matter of law; or, in the alternative,
- (2) Issue a final action by a date certain on the 2023 license, without further proceedings, which provides Sunny Farms with a right of appeal to ERAC; or, in the alternative,
- (3) Conduct a hearing by a date certain, and in a manner consistent with Sunny Farms' due process rights.

Or, if the Court decides not to grant a peremptory writ, Sunny Farms respectfully requests that the Court issue an alternative writ allowing Sunny Farms the opportunity to present further evidence demonstrating its entitlement to a writ of mandamus.

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

Dale E. Papajcik

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***Attorneys for Relator Sunny Farms
Landfill LLC***

CERTIFICATE OF SERVICE

A copy of this Verified Complaint, accompanying Memorandum in Support, Affidavit, and exhibits attached thereto were sent by e-mail and Federal Express overnight mail to Attorneys William Haak and Jack Van Kley, Counsel for Respondent, at the following addresses on this 10th day of May, 2023:

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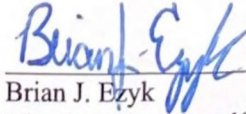
***Attorneys for Relator Sunny Farms
Landfill LLC***

**AFFIDAVIT OF BRIAN J. EZYK IN SUPPORT OF RELATOR'S
VERIFIED COMPLAINT FOR MANDAMUS RELIEF**

I, Brian J. Ezyk, Vice President of Landfills for WIN Waste Innovations, and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

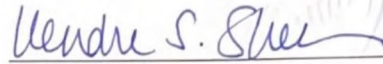
1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Complaint on the basis of personal knowledge.
2. In my role as Vice President of Landfills, I am responsible for overseeing the operations of Sunny Farms Landfill and ensuring that it is in compliance with Ohio's environmental laws and regulations.
3. I have reviewed the Complaint in this action.
4. The facts set forth in the Complaint are true based upon my personal knowledge and my review of the public record.
5. The attached exhibits are true and correct copies of what they purport to be:
 - Ex. 1 - License Application (9.27.22)
 - Ex. 2 - Email from M. Reiser, Ohio EPA, to L. Wallrabenstein, SCGHD (11.23.22)
 - Ex. 3 - Board Special Meeting Minutes (12.29.22)
 - Ex. 4 - Notice of Intent to Deny (1.3.23)
 - Ex. 5 - Request for Hearing (1.19.23)
 - Ex. 6 - Letter to D. Devine (2.9.23)
 - Ex. 7 - Letter to Director A. Vogel *et al.*, Ohio EPA (4.11.23)
 - Ex. 8 - Toledo Blade Article (4.28.23)

Affiant says nothing further.



Brian J. Ezyk
Vice President, Landfills
WIN Waste Innovations

Sworn to before me and subscribed in my presence by Brian J. Ezyk on this 9th day of May, 2023.



Notary Public

KENDRA S. SHERMAN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03

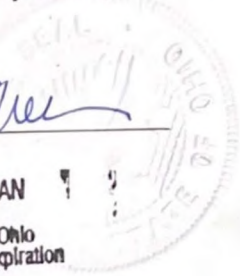


EXHIBIT D

Verified Amended Complaint for Mandamus Relief, *State of Ohio ex rel.
Sunny Farms Landfill LLC v. Seneca County Board of Health*,
Case No. 2023-0617 (Ohio S. Ct.) (June 7, 2023)

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
WIN WASTE INNOVATIONS OF)
SENECA COUNTY LLC)
FORMERLY KNOWN AS)
SUNNY FARMS LANDFILL LLC)
12500 W County Rd 18)
Fostoria, OH 44830)

Case No. 2023-0617

Relator,)

v.)

ORIGINAL ACTION
IN MANDAMUS

SENECA COUNTY BOARD OF)
HEALTH)
71 S. Washington Street)
Tiffin, OH 44883)

Respondent.

VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF

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*Attorneys for Relator WIN Waste
Innovations of Seneca County LLC*

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO *EX REL.*)
 WIN WASTE INNOVATIONS OF)
 SENECA COUNTY LLC)
 FORMERLY KNOWN AS)
 SUNNY FARMS LANDFILL LLC) **Case No. 2023-0617**
 12500 W County Rd 18)
 Fostoria, OH 44830)

Relator,

v.

SENECA COUNTY BOARD OF)
 HEALTH)
 71 S. Washington Street)
 Tiffin, OH 44883)

**ORIGINAL ACTION
IN MANDAMUS**

Respondent.

VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF

INTRODUCTION & OVERVIEW OF REQUESTED RELIEF

1. Relator WIN Waste Innovations of Seneca County LLC, formerly known as Sunny Farms LLC (“Sunny Farms”), operates a municipal solid waste facility in Seneca County, Ohio (the “landfill” or the “facility”). To avoid confusion with prior filings, Relator and its facility will continue to be referred to as “Sunny Farms” for the purpose of this suit.

2. The facility has been in existence since approximately 1970. Each year, Sunny Farms must renew its operating license with Respondent Seneca County Board of Health (the

“Board”). Sunny Farms has applied for and ultimately received its annual operating license as required every year until recently.

3. Under settled Ohio law, the Board must renew Sunny Farms’ license to operate the facility if—as is the case here—Sunny Farms is in “substantial compliance” with Ohio’s environmental laws and regulations applicable to operation of a landfill and meets other criteria established for issuance of a license in Ohio Administrative Code (“OAC”) 3745-501-15(A). Further, the Board may deny a license only on four (4) grounds as set forth in OAC 3745-501-15(B). It is undisputed that Sunny Farms meets the criteria in OAC 3745-501-15(A) and Ohio EPA has determined that Sunny Farms is in “substantial compliance.” It is further undisputed that none of the four grounds for denial in OAC 3745-501-15(B) exist to deny Sunny Farms its license.

4. Sunny Farms is therefore entitled to a 2023 operating license. The Board of Health has no discretion to determine otherwise or override Ohio EPA’s finding that Sunny Farms is in substantial compliance. *See Fairfield Sanit. Landfill, Inc. v. Fairfield Cty. Dist. Bd. of Health*, 68 Ohio App.3d 761, 775, 589 N.E.2d 1334 (10th Dist.1990) (holding that a solid waste disposal facility may not be denied an operating license if it is in substantial compliance with the law and the facility is “entitled to rely upon the EPA’s determination of substantial compliance, and the board of health has no discretion to review, reverse, or override the EPA determination”).

5. In issuing the annual license to Sunny Farms, the Board is subject to the requirements of the Open Meetings Act. Because the Board is a public body, “[a]ll meetings of [the Board] are ... to be public meetings open to the public at all times.” Ohio Revised Code (“R.C.”) § 121.22(C). Any “formal action adopted in an open meeting *that results from deliberations in a meeting not open to the public is invalid*” unless specific enumerated exceptions apply. R.C. § 121.22(H) (emphasis added). *The Board is therefore required to*

publicly deliberate the license and any conditions it attaches to the license, or the license is invalid. In addition, the party who was denied the open meeting is “*irrebuttably presumed*” to suffer “*[i]rreparable harm and prejudice*” as a result of the denial. R.C. § 121.22(I)(3) (emphasis added).

6. Through a combination of actions and inaction, the Board violated and perverted the requirements of Ohio law that dictate when and how an annual operating license must be issued. First, the Board failed to timely act on Sunny Farms’ license application within 90 days as mandated by Ohio EPA’s regulations. *See* OAC 3745-501-20(C)(4)(a). Second, the Board issued a Notice of Intent to Deny (“the Notice”) Sunny Farms’ 2023 operating license *without explanation*. *See* Ex. 4 attached to the Affidavit of Brian J. Ezyk (the “Ezyk Aff.”). Third, the Board violated Ohio law by refusing, through inaction, to set and conduct a legally required hearing or issue a final decision on Sunny Farms’ license application. *See* Ex. 5 attached to the Ezyk Aff. Fourth, after Sunny Farms filed a verified complaint for writ of mandamus in this Court on May 10, 2023, the Board violated the Open Meetings Act when it finally issued the 2023 license but with 25 conditions without any discussion or deliberation in an open meeting. *See* Ex. 2 attached to the Affidavit of Ben Nutter (the “Nutter Aff.”). Any deliberations on the conditions occurred in a closed executive session held on May 25, 2023, shrouding the Board’s acts in secrecy. *See* Nutter Aff., ¶ 4(b)-(e).

7. Sunny Farms respectfully seeks relief from this Court in the form of a writ to require the Board to issue the license to which Sunny Farms is entitled as a matter of law *following public deliberations*. Under the Open Meetings Act, Sunny Farms has a “clear legal right” to an open meeting regarding any conditions imposed on its license, and the Board has a “clear legal duty” to provide that open meeting. The undisputed facts grant the Board no discretion. Issuance of the

2023 license and any conditions to Sunny Farms following public deliberation is mandatory as a matter of law.

JURISDICTION AND VENUE

8. Jurisdiction and venue are proper pursuant to Article IV, Section 2(B)(1) of the Ohio Constitution and R.C. § 2731.02.

PARTIES

9. WIN Waste Innovations of Seneca County LLC is an entity organized under the laws of Ohio and operates a municipal solid waste landfill located at 12500 W County Rd 18, Fostoria, Seneca County, OH 44830.

10. The Seneca County General Health District (the “Health District”) is an approved health district under R.C. § 3734.08. The Board, as the Health District’s governing body, is authorized by the Director of the Ohio Environmental Protection Agency (the “Ohio EPA”) to administer the Solid and Infectious Waste and Construction & Demolition Debris Programs pursuant to Ohio EPA’s annual survey dated May 18, 2022. *See* Ex. 5 attached to the Ezyk Aff.; *see also* R.C. §§ 3734.07; 3734.08.

11. The Board’s responsibilities include licensing and inspecting municipal solid waste landfills within its district.

12. The Board is a “public body” under the Open Meetings Act. R.C. § 121.22(B)(1)(a). Under the Act, “[a]ll meetings of any public body are ... to be public meetings open to the public at all times.” R.C. § 121.22(C).

OVERVIEW OF OHIO’S SOLID WASTE PROGRAM

13. In Ohio, municipal solid waste landfills must obtain and renew an annual operating license, either with the Ohio EPA or, if there is one, with the board of health of an approved district.

To receive a renewed license, the landfill must timely submit a complete application by September 30 each year. Ohio EPA's solid waste regulatory framework is designed to give the regulated community the predictability of a properly functioning, environmentally protective legal scheme.

14. Certain criteria must be met for an approved board to issue or deny a landfill operating license. These criteria are specifically outlined in OAC 3745-501-15. Where all the administrative criteria have been met (*i.e.*, the license application is complete, the landfill owner secures the appropriate authorizations and approvals, the landfill has provided financial assurance, etc.) the key consideration upon renewal is whether the landfill is in substantial compliance with applicable environmental laws. If the landfill is in substantial compliance, the board must issue the license. If a board acts contrary to Ohio EPA's finding of substantial compliance, the board's action will be overturned as unlawful and unreasonable by ERAC. *See Fairfield Sanitary Landfill, Inc.*, 68 Ohio App.3d at 769.

15. If an approved board intends to deny the license (and there are only four legal grounds upon which a board may deny a license), it must first issue a notice of intent to deny. Then, upon the applicant's request within 30 days of receipt of the notice, the board must hold a hearing in accordance with R.C. § 3709.20. Following the hearing, the board must issue a final order approving or denying the license. *See* OAC 3745-500-120(D)(1)(d).

16. Following the issuance of the board's final order, the applicant can appeal to ERAC. *Id.* But only the board's final order is an action that may be appealed to ERAC. *Id.* ("A copy of the final action of the approved board of health regarding the denial or revocation of the license . . . with a statement of how and within what time period the final action may be appealed to the environmental review appeals commission shall be sent by certified mail . . .").

17. Because the Board is a public body, any “formal action adopted in an open meeting *that results from deliberations in a meeting not open to the public is invalid* unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section.” R.C. § 121.22(H). (emphasis added).

18. If the board intends to deny the facility its license, the board must “at a minimum” provide the facility with a (1) notice of its intent to deny, (2) a hearing upon request, if requested within 30 days of the notice, and (3) a copy of the board’s final decision, which may then be appealed to ERAC. *See* OAC 3745-500-120(D). Each of these steps must be completed within the 90-day window referenced above. *See* OAC 3745-501-20(C)(4)(a).

19. These statutory procedures allow transparency, predictability, and certainty for both the public and landfill owners and operators to obtain timely review and action on their annual operating licenses. While Ohio EPA’s rules allow Sunny Farms to continue operating under its existing 2022 license while its 2023 application is pending a final action, the impact and long-term effect of the Board’s unlawful actions on all stakeholders override the short-term benefit of such rules.

20. Solid waste landfills must secure renewed operating licenses every year, year after year. Should regulatory boards be permitted to blatantly violate state law as in the present case, such permissive action will further subvert longstanding Ohio law and Ohio EPA’s regulations governing annual operating licenses. The unlawful action of the Board denies the regulated community (*i.e.*, Sunny Farms) and the public the right of certainty and the predictability of a properly and orderly-functioning environmental regulatory framework. Nowhere does Ohio law authorize a regulatory body to act unlawfully and, as a result, illegally abuse a law-abiding member

of the regulated community or hide from the public its discussions and deliberations. The relief requested in this Verified Amended Complaint seeks the intervention of this Court to prevent such abuse in the present case and to discourage similar unlawful behavior in the future.

21. In sum, this case concerns the Board's attempt to sidestep Ohio law and pervert the long-established Ohio EPA regulatory scheme by delaying issuance of Sunny Farms' license and then shielding from the public deliberations when the license with unreasonable conditions was finally issued.

STATEMENT OF FACTS

22. Environmental permits and operating licenses issued in a lawful, timely and predictable manner are the business life blood of waste management facilities in Ohio such as Sunny Farms. During COVID-19, the State of Ohio designated landfill facilities as indispensable businesses. *See Dir. of Health Amy Acton, Director's Stay at Home Order* (March 22, 2020), <https://governor.ohio.gov/static/DirectorsOrderStayAtHome.pdf> (last visited May 8, 2023) (designating solid waste and recycling collection and removal as "Essential Infrastructure").

23. The unlawful actions by the Board have and continue to cause significant cash expense and enterprise value damage to the business of Sunny Farms, its parent company, and investors.

24. Sunny Farms has been in operation for almost five decades. The landfill operates in an environmentally protective manner as confirmed by Ohio EPA's environmental permitting actions and its intensive regulatory scrutiny. Sunny Farms has applied for and ultimately received its annual operating license as required every year until now.

25. During 2022, Sunny Farms operated the landfill in compliance with Ohio's environmental laws and regulations. This fact is undisputed. The Board conducted 31 inspections

of the landfill in 2022. *See* Ex. 6 attached to the Ezyk Aff. During these inspections, the Board did not identify a single deviation from applicable rules at the landfill and issued zero notices of violations to Sunny Farms in 2022. *Id.*

26. Sunny Farms timely submitted its complete license application on September 27, 2022, which required the Board to issue or deny the license within 90 days (*i.e.*, by December 26, 2022) pursuant to OAC 3745-501-20(C)(4)(a). *See* Ex. 1 attached to the Ezyk Aff.

27. From the date of Sunny Farms' application submittal to present, the Board has not alleged a single deficiency in Sunny Farms' application or a scintilla of evidence to show Sunny Farms failed to meet any standard necessary to secure its operating license.

28. On November 23, 2022, an Ohio EPA representative informed the Board that Sunny Farms is in "substantial compliance" with environmental regulations. Specifically, the Ohio EPA Division of Materials and Waste Management stated that it "does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance." *See* Ex. 2 attached to the Ezyk Aff.

29. On December 13, 2022, a Health District employee advised Sunny Farms that certain conditions to the 2023 license were expected to be considered by the Board. *See* Ex. 7 attached to the Ezyk Aff.

30. On December 15, 2022, Sunny Farms sent a letter to the Board outlining its disagreement with the conditions to be considered. *Id.* In the letter, Sunny Farms stated that it believes the Board's proposed conditions were unreasonable or unlawful and not within the scope of the Board's authority. *Id.*

31. On December 29, 2022, the Board held a special meeting regarding Sunny Farms' license renewal. Consistent with the "substantial compliance" finding by Ohio EPA, the Board's own employees and its outside counsel agreed that the Board should grant Sunny Farms' 2023 License. *See* December 29, 2022 Board Meeting Minutes, Ex. 3 attached to Ezyk Aff. ("No Notices of Violation have been issued against Sunny Farms Landfill in 2021 or 2022 by the Health District for non compliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there are no violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. ***The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license.***") (Emphasis added).

32. Ignoring the recommendations of Ohio EPA and the Board's own staff and leadership, the Board, with no reasoning provided, voted on December 29, 2022 to issue a notice of intent to deny the license. *Id.*

33. Following the special meeting on December 29, 2022, and eight days after the Board was required by law to issue or deny the license, the Board issued the Notice on January 3, 2023, a total of 98 days after Sunny Farms submitted its renewal application. *See* Ex. 4 attached to the Ezyk Aff. The Notice provided no explanation of a legal or factual basis as to why the Board intended to deny Sunny Farms' license.

34. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. § 3709.20 and OAC 3745-500-120. *See* Ex. 5 attached to the

Ezyk Aff. Sunny Farms requested the appointment of a hearing examiner, a discovery schedule, and a thoughtful procedure for addressing the Board's Notice.

35. Since sending the Request for Hearing, Sunny Farms has reached out to the Board on multiple occasions to request appointment of a hearing examiner and a procedure for addressing the Notice. Sunny Farms has also repeatedly requested an explanation from the Board as to why it issued the Notice. The Board has refused to respond to Sunny Farms' requests.

36. On April 11, 2023, Sunny Farms apprised Ohio EPA of the Board's ongoing violations and its failure to act on Sunny Farms' 2023 license. Sunny Farms also requested that Ohio EPA determine that the Board is not eligible to remain on Ohio EPA's list of approved boards of health because the Board is not substantially complying with Ohio's solid waste laws and regulations. *See Ex.7* attached to the Ezyk Aff. As further described in the letter, Sunny Farms provides details regarding the unlawful conduct of the Board and the unethical behavior exhibited by certain Board members. *Id.*

37. The Board's Health Commissioner, Anne Goon -- who had decades of experience in a health commissioner role -- made the determination at the December 29, 2022 meeting that Sunny Farms' license should be renewed. *See Ex. 3* attached to the Ezyk Aff. Four months later, on April 27, 2023, the Board dismissed Ms. Goon. The Board offered no reasoning or explanation for its abrupt decision to terminate Ms. Goon. *See Ex. 8* attached to the Ezyk Aff. (April 28, 2023 Toledo Blade article reporting on the termination of Ms. Goon).

38. As a consequence of the Board's failure to take final action, Sunny Farms was forced to file a verified complaint for a writ of mandamus in this Court on May 10, 2023.

39. After Sunny Farms filed its verified complaint, the Board held one of its regularly scheduled meetings on May 25, 2023. The Board opened the meeting and promptly moved to

executive session. Upon exiting from the executive session, the Board voted to issue Sunny Farms’ 2023 annual operating license with conditions without public discussion or deliberation of the license or the terms and conditions of the license. *See* Nutter Aff., ¶ 4(a)-(e).

40. The next day, on May 26, Acting Health Commissioner Laura Wallrabenstein Acting issued the 2023 license with 25 conditions. *See* Ex. 2 to the Nutter Aff. No public discussion or deliberation of the conditions on Sunny Farms’ license was ever held by the Board. *See* Nutter Aff., ¶ 4(e).

41. None of the new license conditions had ever been disclosed to Sunny Farms prior to the license at issue and have never been discussed in any Board of Health open meeting. *See* Nutter Aff. *See* Nutter Aff., ¶ 4(f). The conditions span a broad scope of environmental matters concerning the landfill, including air, water, groundwater, solid waste, and transportation matters. *See* Ezyk Aff., ¶ 4(e).

42. None of these conditions have ever been imposed on the landfill in prior licenses. Sunny Farms maintains many, if not all, of the conditions exceed the Board’s authority and intends to pursue those arguments through an appeal to the Environmental Review Appeals Commission (“ERAC”) in the ordinary course. *See* Ezyk Aff., ¶ 4(d)-(e).

43. The Board’s actions on the license and each condition are all unlawful for the separate reason that they were issued in violation of the Open Meetings Act, which renders invalid formal action that results from deliberations in a closed meeting. R.C. § 121.22(H).

LAW CONCERNING WRIT OF MANDAMUS

44. To be entitled to a writ of mandamus a relator must establish (1) that it has a clear legal right to the relief prayed for; (2) that the respondent has a clear legal duty to perform the

requested act, and (3) that relator has no plain and adequate remedy at law. *See, e.g., State ex rel. Lane v. City of Pickerington*, 130 Ohio St. 3d 225, 2011-Ohio-5454, 957 N.E.2d 29, ¶ 10.

SUNNY FARMS’ RIGHT TO A WRIT OF MANDAMUS AGAINST THE BOARD

45. The Board is a “public body” under the Open Meetings Act. R.C. § 121.22(B)(1). It is the Board of a “county” – Seneca County – because the Board is the governing body of the Seneca County General Health District. R.C. § 121.22(B)(1)(a).

46. The Act sets forth the general rules that “[a]ll meetings of any public body are ... to be public meetings open to the public at all times.” R.C. § 121.22(C). The Act provides that “[a]ll meetings of any public body are declared to be public meetings open to the public at all times.” R.C. § 121.22(C). Under the Act, a “[m]eeting” means “any prearranged discussion of the public business of the public body by a majority of its members.” R.C. § 121.22(B)(2).

47. Under the Act, a “resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body.” R.C. § 121.22(H). And any “formal action adopted in an open meeting *that results from deliberations in a meeting not open to the public is invalid* unless the deliberations were for a purpose specifically authorized in division (G) or (J) of this section and conducted at an executive session held in compliance with this section.” *Id.* (emphasis added). In addition, the party who was denied the open meeting is “*irrebuttably presumed*” to suffer “*[i]rreparable harm and prejudice*” as a result of the denial. R.C. § 121.22(I)(3) (emphasis added).

48. Under the Act, deliberations regarding the Board’s decision to issue Sunny Farms’ license and any associated conditions on the license are matters of “public business” that must held in a public meeting. The Board could only have imposed a condition on the license if the condition was “necessary to protect public health and safety and the environment and to ensure that” Sunny

Farms would “comply with” applicable law. OAC 3745-501-20(C)(5). The public had a right to observe deliberations by the Board in connection with any conditions on Sunny Farms’ license.

49. The Board violated the Act when it discussed and deliberated on the general concept of imposing conditions and the specific conditions themselves on Sunny Farms’ license in closed meetings only. No exception under the Act applies to permit the Board to issue the license with conditions following only closed deliberations. Even if the Board initially entered a closed session to discuss the Sunny Farms mandamus action, it was required to move to a public session to deliberate the substantive matter of the license itself and any conditions before taking formal action.

50. Accordingly, under the Act, the Board’s formal action issuing a license with conditions resulting from deliberations in only closed sessions is invalid. R.C. § 121.22(H). Sunny Farms has a clear legal right to a public meeting deliberating the conditions on its license, and the Board has a clear legal duty to hold that public meeting.

51. Furthermore, as the board of health in a health district on the Director of Ohio EPA’s approved list, the Board has a clear legal duty to issue or deny Sunny Farms’ license renewal within 90 days of receiving the application pursuant to OAC 3745-501-20(C)(4)(a). Because the Board’s issuance of the license is invalid under the Open Meetings Act, the Board also remains in violation of the law based on its failure to take valid final action within the required time period.

52. It is undisputed that Sunny Farms meets the criteria under OAC 3745-501-15(A) for its license renewal application. Because (1) Sunny Farms meets all the criteria in OAC 3745-501-15(A); (2) the Board has identified no basis for denial of the license under OAC 3745-501-15(B); and (3) Ohio EPA has determined that Sunny Farms is in substantial compliance, the Board has a clear legal duty to issue the license requested in Sunny Farms’ application.

53. Because the Board is required to issue or deny Sunny Farms' license within 90 days of receiving the application under OAC 3745-501-20(C)(4)(a) and has failed to do so properly by that deadline, the Board has a clear legal duty to take immediate final action on Sunny Farms' license by properly issuing or denying the license. The Board is in continuing violation of Ohio's environmental protection laws based on its failure to take valid action following public deliberation.

54. Other than action by order of this Court, Sunny Farms has no plain and adequate remedy at law to compel the Board to comply with the Open Meetings Act in validly issuing the 2023 license following public deliberation. While Sunny Farms would ordinarily file an appeal to ERAC under R.C. § 3745.04 to contest unreasonable conditions on the license, nothing in ERAC's jurisdictional statutes suggests it can compel compliance with the Open Meetings Act. *See* R.C. § 3745.04.

55. Ohio law does not allow the Board to simply sidestep the timeframes and public deliberations required by Ohio law, and a writ of mandamus is the appropriate remedy to correct the Board's unlawful and noncompliant conduct.

PRAYER FOR RELIEF

WHEREFORE, Relator Sunny Farms respectfully requests that this Court issue:

A peremptory writ of mandamus ordering the Board to, by a date certain, issue the 2023 license, because Sunny Farms is so entitled as a matter of law, following public deliberations in an open meeting, as required by the Open Meetings Act.

If the Court decides not to grant a peremptory writ, Sunny Farms respectfully requests that the Court issue an alternative writ allowing Sunny Farms the opportunity to present further evidence demonstrating its entitlement to a writ of mandamus.

Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

Dale E. Papajcik

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*Attorneys for WIN Waste Innovations of
Seneca County LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Verified Amended Complaint was served by e-mail upon the following this 7th day of June, 2023.

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Respectfully submitted,

SQUIRE PATTON BOGGS (US) LLP

/s/ Dale E. Papajcik

Dale E. Papajcik

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*Attorneys for WIN Waste Innovations of
Seneca County LLC*

**AFFIDAVIT OF BRIAN EZYK IN SUPPORT OF RELATOR'S
VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF**

I, Brian Ezyk, Vice President of Landfills for WIN Waste Innovations (“WIN”), and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Verified Amended Complaint on the basis of personal knowledge.
2. In my role as Vice President of Landfills, I am responsible for overseeing the operations of the landfill owned and operated by WIN Waste Innovations of Seneca County LLC (formerly known as Sunny Farms Landfill LLC and referred to herein for ease of reference as “Sunny Farms”) and ensuring that the landfill is in compliance with Ohio’s environmental laws and regulations.
3. I have reviewed the Verified Amended Complaint in this action.
4. The facts set forth below and in the Verified Amended Complaint are true based upon my personal knowledge and my review of the public record.
 - a. I attended the Seneca County Board of Health (the “Board”) meeting on May 25, 2023. There were no public deliberations or discussions regarding Sunny Farms’ license or conditions at this meeting.
 - b. On May 26, 2023, Acting Health Commissioner, Laura Wallrabenstein, issued Sunny Farms’ 2023 license with 25 conditions.

- c. The license conditions imposed by the Board are unreasonable and unlawful, such that they can and will cause irreparable harm to Sunny Farms.
 - d. Sunny Farms maintains that most, if not all, of the conditions exceed the Board's authority and intends to pursue those arguments through an appeal in the ordinary course.
 - e. The conditions span a broad scope of environmental matters concerning the landfill, including air, water, groundwater, solid waste, and transportation matters. None of these conditions have ever been imposed on Sunny Farms in a license before.
 - f. The conditions also exceed industry standards and impose unduly burdensome requirements. For example, in addition to being beyond the scope of the Board's authority, requiring rail cars to be water-tight is not the industry standard for the transport of construction and demolition debris.
5. The attached exhibits are true and correct copies of what they purport to be:
- Ex. 1 - License Application (9.27.22)
 - Ex. 2 - Email from M. Reiser, Ohio EPA, to L. Wallrabenstein, SCGHD (11.23.22)
 - Ex. 3 - Board Special Meeting Minutes (12.29.22)
 - Ex. 4 - Notice of Intent to Deny (1.3.23)
 - Ex. 5 - Request for Hearing (1.19.23)
 - Ex. 6 - Letter to D. Devine (2.9.23)
 - Ex. 7 - Letter to Director A. Vogel *et al.*, Ohio EPA (4.11.23)
 - Ex. 8 - Toledo Blade Article (4.28.23)

Affiant says nothing further.



Brian Ezyk
Vice President of Landfills
WIN Waste Innovations

Sworn to before me and subscribed in my presence by Brian Ezyk on this 7th day of June, 2023.



Notary Public



DANIEL PESANTE
Notary Public
State of Ohio
My Comm. Expires
December 1, 2025



B.Nutter Affidavit for Amended Complaint 6.7.2023.pdf

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E-Signature Summary

E-Signature 1: Benjamin E Nutter (BEN)

June 07, 2023 14:46:35 -8:00 [FC7B97005098] [45.19.171.87]
 bnutter@win-waste.com (Principal) (ID Verified)

E-Signature Notary: Suzanne Marie McFarland (smm)

June 07, 2023 14:46:35 -8:00 [EF3AE3818DD9] [163.182.17.113]
 sue.mcfarland@quirepb.com
 I, Suzanne Marie McFarland, did witness the participants named above electronically sign this document.



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**AFFIDAVIT OF BEN NUTTER IN SUPPORT OF RELATOR'S
VERIFIED AMENDED COMPLAINT FOR MANDAMUS RELIEF**

I, Ben Nutter, Community Engagement Specialist for WIN Waste Innovations (“WIN”), and as a duly authorized representative of the Relator herein, under penalty of perjury, hereby declare and state as follows:

1. I am over the age of eighteen and competent to testify to the facts set forth in the foregoing Complaint on the basis of personal knowledge.
2. I am the Community Engagement Specialist for WIN. In my role, I am responsible for community engagement and government affairs for WIN’s landfill facilities, including the WIN Waste Innovations of Seneca County LLC landfill (formerly known as “Sunny Farms Landfill” and referred to herein for ease of reference as “Sunny Farms”) in Fostoria, Ohio.
3. I have reviewed the Amended Complaint in this action.
4. The facts set forth below and in the Amended Complaint are true based upon my personal knowledge and my review of the public record.
 - a. I attended the Seneca County Board of Health (“Board”) meeting held on May 25, 2023.
 - b. Immediately following the Pledge of Allegiance, the Board went into executive session. The reason for the executive session the Board provided was to discuss “pending legal issues.”
 - c. The Board was in executive session for approximately two hours.

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- d. Once the Board recommenced the public meeting, a Board member made a motion to vacate the Board's Notice of Intent to deny Sunny Farms' 2023 license and issue a new license with special conditions. This motion was seconded and unanimously approved.
 - e. Prior to this motion, the Board neither publicly discussed nor deliberated the license or its conditions.
 - f. None of the new license conditions had ever been disclosed to Sunny Farms prior to the license at issue and had never been discussed in any prior Board of Health meeting.
 - g. Thereafter, on May 26, the Acting Health Commissioner, Laura Wallrabenstein, issued the 2023 license with 25 conditions. The Board did not disclose these conditions to Sunny Farms prior to issuing this license.
 - h. In my previous experience, the Board normally issues Sunny Farms its annual license following an open meeting with public dialogue.
5. The attached exhibits are true and correct copies of what they purport to be:
- a. Exhibit 1 – Board of Health Meeting Agenda dated May 25, 2023.
 - i. Sunny Farms and the landfill facility are not mentioned in the Board's agenda for this meeting.
 - b. Exhibit 2 – License with Conditions issued May 26, 2023.

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Affiant says nothing further.

Benjamin E Nutter
Signed on 2023/06/07 14:48:35 -0500

Ben Nutter

STATE OF OHIO:
COUNTY OF WARREN:

Sworn and subscribed before me this 7th day of June, 2023 by Ben Nutter, via online notarization pursuant to Ohio Revised Code §147.60 et seq. This certificate pertains to an electronic notarial act performed with the principal appearing online using audio-video communication. An oath or affirmation was administered to the signer with regard to the notarial act.



Suzanne Marie McFarland
Ohio Online Notary Public
Location: Mason, Ohio
My Commission Expires: March 29, 2026



Notarial act performed by audio-visual communication

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EXHIBIT E

*WIN Waste Innovations of Seneca County LLC v. Julie Richards, Health
Commissioner, Seneca County General Health District,
[f.k.a. Laura Wallrabenstein, Interim Health Commissioner],
Motion for Stay, Cause No. ERAC 23-7181 (June 16, 2023)*

Amended Complaint for Mandamus Relief in *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.), to allege a violation of Ohio's Open Meetings Act. Importantly, Ohio's Open Meetings Act provides a presumption of "irreparable harm" where there is proof of a violation or a threatened violation of this Act. Accordingly, Appellant respectfully requests that this Commission issue a stay pending the Ohio Supreme Court's resolution of Sunny Farms' Open Meetings Act claim. Appellant also reserves the right to file a motion for stay on the merits of the License conditions and how Appellant is irreparably harmed by the License conditions following this Commission's decision on this motion. The grounds for this Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,



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Rebekah M. Singh (083574)
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*Attorneys for WIN Waste Innovations of
Seneca County LLC*

MEMORANDUM IN SUPPORT**I. FACTUAL BACKGROUND**

Sunny Farms operates a municipal solid waste landfill in Fostoria, Seneca County, Ohio (the “Landfill”). The Landfill is in substantial compliance with Ohio’s environmental laws and regulations. Indeed, the Seneca County Board of Health (the “Board”), which is the governing body of the Seneca County General Health District (“SCGHD”), conducted 31 inspections of the Landfill in 2022 and found no violations of applicable environmental laws and regulations and issued zero notices of violations to Sunny Farms. In addition, Sunny Farms has been in full and substantial compliance with the Partial Consent Order and Final Judgment Entry (“Consent Order”) issued by the Seneca County Common Pleas Court on July 26, 2019 in Case No. 19-CV-0224.

On September 27, 2022, Sunny Farms submitted its application to the Board to renew its annual operating license for the Landfill. Following submittal of the annual operating license application, the Board did not communicate any alleged deficiency in Sunny Farms’ application or any alleged violations of applicable environmental laws and regulations by Sunny Farms.

On November 23, 2022, an Ohio EPA Division of Materials and Waste Management representative informed the Board that Sunny Farms was in “substantial compliance” with applicable environmental regulations, stating that Sunny Farms “does not have any outstanding violations or enforcement that would preclude the Seneca County Board of Health from approving the 2023 license for Sunny Farms Landfill. Currently, Sunny Farms Landfill is in substantial compliance.” Soon after, on December 13, 2022, a Health District employee advised Sunny Farms that the Board intended to impose several conditions in the License. Sunny Farms responded on December 15, 2022 with a letter to the Board, outlining its disagreement with the conditions that

the Board was considering including with the 2023 license and arguing that these conditions were unreasonable, unlawful, and not within the scope of the Board's authority.

On December 29, 2022, the Board held a special meeting regarding Sunny Farms' license renewal application. At this meeting, the Board's employees and outside counsel agreed that the Board should grant Sunny Farms' 2023 license. *See* Dec. 29, 2023 Board Meeting Minutes ("No Notices of Violation have been issued against Sunny Farms Landfill in 2021 or 2022 by the Health District for noncompliance with state regulations or the consent order. The Ohio EPA has indicated via email that Sunny Farms Landfill is in substantial compliance, indicating that there are no violations or enforcements that would preclude the Board of Health from approving the 2023 Operating License for Sunny Farms Landfill. The health district staff and leadership concur with the conclusions of the EPA and the solid waste and legal consultants employed by the Health District that WIN Waste Innovations/Sunny Farms Landfill has no outstanding violations or enforcements from 2022 that would preclude issuance of the 2023 license.").

Ignoring the recommendations of Ohio EPA and its own employees, the Board voted on December 29, 2023 to issue a notice of intent to deny the license. On January 3, 2023, the Board issued the Notice of Intent to Deny ("Notice"). The Notice contained no legal or factual explanation for the denial. On January 19, 2023, Sunny Farms timely requested a hearing on its pending license application pursuant to R.C. §3709.20 and OAC 3745-500-120. After making this request, Sunny Farms received no response from the Board despite its many attempts to contact the Board to arrange for a hearing and procedure for addressing the Notice.

As a result, on April 11, 2023, Sunny Farms contacted Ohio EPA by letter, apprising the agency of the Board's ongoing violations and failure to act on Sunny Farms' 2023 license. Sunny Farms requested that Ohio EPA determine that the Board is not eligible to remain on Ohio EPA's

list of approved boards of health because the Board is not substantially complying with Ohio's solid waste laws and regulations. The letter details the Board's unlawful conduct as well as the unethical behavior of certain Board Members.

Furthermore, as a result of the Board's failure to timely act on Sunny Farms' license application and having received no response or explanation for the Notice nor a response to Sunny Farms' request for a hearing, Sunny Farms was left with no choice but to file a *Verified Complaint for Mandamus Relief* with the Ohio Supreme Court on May 10, 2023. *See State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.).

Also pending before the Ohio Supreme Court is Sunny Farms' Verified Complaint for Mandamus Relief filed on May 24, 2023 in response to the Board's violations of Ohio's Public Records Act, R.C. §149.43(B). *See State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0676 (Ohio S. Ct.).

On May 25, 2023, the Board finally issued the final License; however, the Board's meeting was held in contravention of Ohio's Open Meetings Act. At its regularly scheduled meeting, the Board opened the meeting and then promptly moved to executive session. After exiting the executive session, the Board voted to issue the License to Sunny Farms with conditions and without any public discussion or deliberation of the terms of the License. As a result, on June 7, 2023, Appellant filed a Verified Amended Complaint for Mandamus Relief in *State of Ohio ex rel. Sunny Farms Landfill LLC v. Seneca County Board of Health*, Case No. 2023-0617 (Ohio S. Ct.), to allege a violation of Ohio's Open Meetings Act and to request that the court invalidate the License.

II. LEGAL ARGUMENT

Ohio Revised Code § 3745.04 authorizes the Commission to grant a stay of the effectiveness of a license upon application by the Appellant. A stay should be granted where there are “compelling reasons” that justify the stay. *See Broadway Christian Church v. Republic Steel Corp.*, 50 Ohio App. 2d 98 (8th App. Dist. 1976) (upholding stay granted by the Environmental Board of Review of a consent order). In determining whether to issue a stay pending appeal, the Commission has recognized that a stay is appropriate where the following factors weigh in favor of its issuance:

1. The petitioner is likely to prevail on the merits of its appeal;
2. The petitioner has shown that without such relief, it will be irreparably injured;
3. Issuance of a stay would not substantially harm other parties interested in the proceedings; and
4. The public interest supports issuing a stay.

See Justin et al. v. Maynard, No. EBR 471106, 1984 Ohio ENV LEXIS 24 (EBR Oct. 17, 1984) (adopting and applying the law of *Virginia Petroleum Jobbers Ass’n v. Federal Power Commission*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *Benton Township v. Williams*, No. EBR 75-50, 1977 Ohio ENV LEXIS 1 (EBR Nov. 10, 1975) (same). As demonstrated below, each factor strongly supports a stay in this appeal.

A. Appellant is Likely to Prevail on the Merits in this Appeal.

Under Ohio law, Appellant will prevail in this appeal if it demonstrates that the Commissioner’s action was unreasonable or unlawful. *See* Ohio Revised Code § 3745.05. The term “unlawful” means that the action “is not in accordance with law” and “unreasonable” means that the action is “not in accordance with reason” or has “no valid factual foundation.” *See Citizens Committee v. Williams*, 56 Ohio App. 2d 61, 70 (1977); *General Electric Lighting v. Koncelik*,

2006 Ohio 1655, *P34 (10th App. Dist. 2006) (affirming Commission’s determination that Ohio EPA’s action was unreasonable where it lacked a valid factual basis).

Here, Sunny Farms is likely to prevail on the merits, in part, because the Board violated Ohio’s Open Meetings Act. On May 25, 2023, the Board participated in a regularly scheduled meeting; however, it quickly moved to executive session (*i.e.*, a closed session). After exiting its executive session, the Board voted to issue Appellant’s License with 25 conditions without any public deliberation or participation.

Because the Board is a “public body,” “[a]ll meetings of [the Board] are ... to be public meetings open to the public at all times.” *See* R.C. §121.22(C). Any “formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid” unless certain exceptions apply. *See* R.C. §121.22(H). In order to prevail on its Open Meetings Act claim, Appellant must show that the Board as a “public body” held a “meeting”, as those terms are defined in the Act, to discuss public business without public participation.

The Board is a “public body,” defined as “[a]ny board, commission ... or similar decision-making body of any county ... or other political subdivision or local public institution.” *See* R.C. §121.22(B)(1)(a). The Board is a “board ... of [a] county” (Seneca County) where it is the governing body of the Seneca County General Health District.

Moreover, the Board’s May 25, 2023 deliberations on the License constituted a “meeting,” which is defined as “any prearranged discussion of the public business of the public body by a majority of its members.” R.C. §121.22(B)(2). Here, the meeting was prearranged to occur on May 25, 2023 and was attended by a majority of the Board’s members.

The issuance of the License plainly deals with “public business,” though that term is not defined under the Open Meetings Act. The State’s solid waste facility licensing program is

designed to ensure that solid waste facilities operate in a manner that is consistent with the public's interest. *See, e.g.*, OAC 3745-501-15(A)(12) (requiring applicants to exhibit "sufficient reliability, expertise, and competency to operate the facility in substantial compliance with environmental laws in this state"). Deliberations regarding a landfill annual license relate to matters relevant to the community and are not private matters. Indeed, the conditions imposed in the License were for some public purpose.

Therefore, the Board as a "public body" held a "meeting" to discuss "public business." However, the Board's meeting allowed for no public discussion or deliberation in clear contravention of the Ohio Open Meetings Act. As a result, the License is invalid. Indeed, Appellant seeks a peremptory writ of mandamus from the Ohio Supreme Court, ordering the Board to issue Appellant's annual operating license following public deliberations in an open meeting, as required by Ohio law.

B. Appellant Will Be Irreparably Injured Without a Stay.

Appellant will suffer irreparable injury if a stay of the effectiveness of the License is not issued in this appeal. Ohio's Open Meetings Act recognizes that "upon proof of a violation or threatened violation," "*[i]rreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebutably presumed.*" *See* R.C. §121.22(I)(3) (emphasis added). The public, including Appellant, was not given the opportunity to participate in the Board's May 25, 2023 meeting nor given the chance to deliberate on the terms and conditions of the License prior to the Board's vote. Appellant is irreparably harmed by its inability to participate in the meeting,

which issued a License with an unprecedented number of conditions that are largely unreasonable, unlawful, arbitrary and capricious.

Nothing in ERAC's jurisdictional statute suggests that it has the authority to compel compliance with the Open Meetings Act. *See* R.C. §3745.04. Thus, while Appellant has filed a Notice of Appeal of the License with this Commission to maintain its right of appeal, a writ of mandamus from the Ohio Supreme Court is necessary in order to compel the Board to comply with the Open Meetings Act. Therefore, Appellant will be irreparably harmed by moving forward with its appeal of the invalid License without first obtaining a judgment on the writ from the Ohio Supreme Court. Appellant requests a stay of this appeal in light of its case seeking a writ of mandamus currently pending before the Ohio Supreme Court. In the event that the Ohio Supreme Court finds that the Board acted lawfully under Ohio's Open Meetings Act, Appellant reserves the right to file a subsequent motion for stay based on the merits of the License, which contains conditions that are unlawful, unreasonable, arbitrary, and capricious.

C. Issuance of a Stay Would Not Substantially Harm SCGHD.

The harm Appellant would suffer if the stay is denied outweighs any harm SCGHD would purportedly suffer if the stay is issued. In *Wagner Electric Corp. v. Thomas*, 612 F. Supp. 736, 742 (D. Kan. 1985), the court stated:

As an administrative agency, EPA exists only to serve the public's interest. Thus, its interests are fully subsumed within the broader public interest. Any asserted interest other than that of the public would not be legitimate, and will not be considered by this court.

SCGHD's interests must be described similarly.

There is no harm that SCGHD or the public would suffer if the License is stayed pending Ohio Supreme Court's decision on Appellant's pending complaint for a writ of mandamus based on the Board's violation of the Open Meetings Act. As discussed fully above, Sunny Farms

remains in full compliance with its Ohio EPA permits, the Consent Order, and all relevant laws and regulations. Indeed, the Board's employees as well as Ohio EPA have represented that Sunny Farms is in full, substantial compliance. Therefore, issuing this stay will not adversely affect human health or the environment.

D. The Public Interest Supports Issuing a Stay.

The public interest is best served by granting a stay in this appeal. Ohio's Open Meetings Act is intended to allow for the meaningful participation of the public in meetings held by public bodies. Here, the Board circumvented the law by discussing a public matter, the issuance of an annual permitting license to the Landfill, in a private meeting with no public deliberation. Indeed, not only has Appellant suffered as a result of the Board's violation of the Open Meetings Act but so has the public at large. Therefore, the public interest is best served by issuing a stay in this case.

III. CONCLUSION

For the reasons described above, Appellant respectfully requests that the Commission grant this motion to stay the effectiveness of the License issued by the Board, pending the outcome of Sunny Farms' claim before the Ohio Supreme Court with respect to the Board's violation of Ohio's Open Meetings Act. Sunny Farms also reserves the right to file a motion for stay regarding the merits of the License and how it irreparably harms Appellant in the event that the Ohio Supreme Court finds contrary to its Ohio Open Meetings Act claims or if this Commission rejects this Motion based on Sunny Farms' Open Meetings Act allegations. Further, Appellant reserves the right to request an expedited stay hearing on any future motion for stay filed on the merits of the License. *See* OAC 3746-5-22. The Commission has held that an expedited hearing is appropriate where the circumstances dictate that such a mechanism will aid the Commission in resolving a dispute in an expeditious manner. *See Johnson's Island Property Owners Ass'n v. Schregardus,*

No. EBR 623757-623758, 1997 WL 453578 (EBR Aug. 6, 1997) (granting a motion for expedited consideration and for summary judgment, and remanding the action to the Director for proceedings in conformance with the ruling); *Moats v. Schregardus*, No. EBR 493288, 1995 WL 552780 (EBR Aug. 29, 1995) (granting and holding an expedited hearing on the merits of the case without ordering a stay of the agency's action).

Respectfully submitted,



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Email: Jennifer.satterfield@squirepb.com

*Attorneys for WIN Waste Innovations of
Seneca County LLC*

CERTIFICATE OF SERVICE

A copy of the foregoing Appellant's Motion for Stay was served upon the following by regular

U.S. Mail this 16th day of June, 2023:

Laura Wallrabenstein
Interim Health Commissioner
Seneca County General Health District
71 S. Washington Street
Tiffin, Ohio 44883

Jack A. Van Kley
Van Kley Law, LLC
132 Northwoods Blvd.
Suite C-1
Columbus, Ohio 43235

William Haak
Haak Law LLC
12595 Brentwood Dr.
Chesterland, Ohio 44026

and

Aaron Farmer, Esq.
Section Chief
Environmental Enforcement Section
Office of the Ohio Attorney General
30 East Broad Street, 25th Floor
Columbus, Ohio 43215



Kendra S. Sherman
*Attorney for WIN Waste Innovations of
Seneca County LLC*

Exhibit A

2023 Annual Operating License Issued by the Seneca County General Health District to WIN Waste Innovations of Seneca County LLC on May 25, 2023



Seneca County General Health District

92 E. Perry St., Tiffin OH 44883

Phone: (419) 447-3691

Fax: (419) 448-5782

401 Kirk St., Fostoria OH 44830

Phone: (419) 435-4401

www.senecahealthdept.org

May 26, 2023

Brian Ezyk
WIN Waste Innovations of Seneca County LLC
12500 W County Road 18
Fostoria, OH 44830

Dear Mr. Ezyk,

Enclosed is the 2023 Solid Waste Facility License for WIN Waste Innovations of Seneca County LLC, and attached conditions as well as the license fee invoice. The license fee is \$59,900 and must be submitted to the Seneca County General Health District by June 26, 2023. Thank you for your continued cooperation in this matter.

If you have questions, please call.

Respectfully,

Laura Wallrabenstein, MA, REHS
Interim Health Commissioner

2023



2023

**Solid Waste Facility License
Municipal Solid Waste Landfill**

License Expires December 31, 2023

Facility: WIN Waste Innovations of Seneca County LLC CID: 37706 12500 W Co Rd 18 Fostoria, OH 44830	Licensee: Sunny Farms Landfill LLC 12500 West County Road 18 Fostoria, OH 44830
---	--

This license has been issued in accordance with the requirements of state law, is subject to revocation or suspension for cause, and is not transferable without the consent of the approved Board of Health and the Director of the Ohio Environmental Protection Agency.

Licensing Authority: Seneca County General Health District

Conditions of Licensure:

The Licensee hereunder, its agents, employees, and all others in active concert with said licensee, including the facility owner and operator, shall be subject to and shall comply with the following conditions of this license:

1. All applicable requirements of Ohio Revised Code Chapters 3734, 3767, 6111, and 3704 and rules adopted thereunder.
2. Permits-to-install, plans, operational reports, other authorizing documents, and administrative and judicial orders applicable to this facility and as approved by the Director of the Ohio Environmental Protection Agency.
3. This license is conditional upon payment of the applicable fee to the Board of Health or the Director, as appropriate, within 30 days after issuance.
4. By applying for and accepting this license, the licensee specifically consents in advance and agrees to allow the Director, the Health District, or an authorized representative, to enter upon the licensee's premises at any reasonable time during the construction and/or operation of the facility for the purpose of inspecting, conducting tests, collecting samples, or examining records or reports pertaining to construction, modification, installation, or operation of the facility. The licensee hereby acknowledges and agrees that any and all rights of access granted herein shall not be deemed to be unreasonable or unlawful under Ohio Revised Code Sec. 3734.07. The licensee, its agents, employees, and all others in active concert with said licensee shall maintain and operate the facility to which the license pertains in a sanitary manner so as not to create a nuisance, cause or contribute to water pollution, or create a health hazard. This license shall not be construed to constitute a defense to any civil or criminal action brought by the State of Ohio or any duly authorized representative thereof to enforce the provisions of Chapters 3734, 3767, 6111, or 3704 of the Ohio Revised Code, or regulations issued thereunder. Issuance of this license does not relieve the licensee of the duty to comply with all applicable federal, state, and local laws, regulations and ordinances.

If Checked, Additional Conditions Apply to This License (See Back, or Attachment)

Jan Willenbrant
Health Commissioner
interim

5/25/23
Date Issued

2023 LICENSE CONDITIONS

DEFINITIONS

The following definitions apply to these conditions:

“Consent Order” means the Partial Consent Order and Final Judgment Entry entered into by the State of Ohio and Sunny Farms Landfill LLC in Case No. 19-cv-0224 in the Court of Common Pleas of Seneca County, Ohio.

“Facility” means the landfill located at 12500 West County Road 18, Fostoria, Ohio and all appurtenances owned or operated by Licensee, including the portion of the railroad track located on property owned or operated by Licensee, roads at the landfill, borrow pits, and the rail car unloading building.

“Licensee” means the owner and operator of the Facility.

“NPDES Permit” means the National Pollutant Discharge Elimination System (“NPDES”) permit issued for the Facility by the Director of Environmental Protection and any future amendments, modifications, or renewals of this permit.

“SCHD” means the Seneca County Health District.

“SWPPP” means the Storm Water Pollution Prevention Plan developed pursuant to the NPDES permit.

CONDITIONS

1. Licensee shall maintain the Facility’s gas collection and control system to ensure its proper operation to prevent subsurface gas migration and odors, including the following.
 - a. By October 31, 2023, Licensee shall determine the actual achieved radius of influence for each gas collection well. Licensee’s determination of a well’s achieved radius of influence shall be based upon operating parameters including (but not necessarily limited to): quarterly average applied vacuum level; percentage of engineered perforation length available for gas exchange; and maximum elevation difference between the top of open well perforations and the landfill’s surface elevation at the location of the well.
 - b. If any gas collection well’s actual achieved radius of influence is less than 75% of that well’s engineered minimum radius of influence, Licensee shall take the following steps:
 - i. Investigate the cause(s) of each well with an identified actual achieved radius of influence deficiency within 30 days of identification of the deficiency;