

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

STATE OF OHIO

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| EXIT C & D LANDFILL, INC. | : | Case No. ERAC 765158 |
| | : | |
| Appellant | : | |
| v. | : | |
| | : | |
| THE STARK COUNTY, OHIO | : | |
| BOARD OF HEALTH | : | |
| | : | |
| Appellees. | : | Issued: August 22, 2002 |

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

Issued By:

ENVIRONMENTAL REVIEW APPEALS
COMMISSION

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This matter comes before the Environmental Review Appeals Commission ("ERAC" or "the Commission") upon a timely Notice of Appeal filed by Appellant Exit C & D Landfill, Inc. ("Exit") of the July 17, 2002 revocation of its 2002 construction and demolition debris ("C & DD") license by Appellee Stark County Combined General Health District Board of Health ("the Board"). Along with its Notice of Appeal, Appellant Exit filed a Motion for Oral Hearing on Expedited Stay of Order of the Board of Health. The Commission convened the requested hearing on Appellant's Motion for Stay on August 1, 2002. At the conclusion of the hearing, the Commission ruled to deny Appellant's Motion for Stay, however, indicated that it would expedite its consideration of the merits of the instant matter.

Appellant Exit C & D Landfill, Inc. was represented by Ms. Jacqueline Bollas Caldwell, Esq., of Krugliak, Wilkins, Griffiths & Dougherty Co. L.P.A., Canton, Ohio. Appellee Stark County Combined General Health District Board of Health was represented by Deborah A. Dawson, Esq., Assistant Prosecuting Attorney, Stark County, Ohio.

All parties agreed, and the Commission concurs, that an adjudication hearing was held below and, therefore, the Commission is confined to the record as certified by the Board. Accordingly, based upon the transcript of the adjudication hearing held by the Stark County Combined General Health District Board of Health, as well as the exhibits considered below and certified to this Commission, we issue the following Findings of Fact, Conclusions of Law and Final Order affirming the Board's revocation of Appellant's 2002 Construction and Demolition Debris License.

FINDINGS OF FACT

1. Appellant Exit C & D Landfill, Inc. operates a construction and demolition debris landfill located at 7099 Fairhill Street, S. E., Waynesburg, Ohio 44688. (Certified Record ["CR"] Item 7.)

2. Pursuant to Ohio Revised Code ("RC") Section 3714.06 and Ohio Administrative Code ("OAC") Chapter 3745-400, any person wishing to establish, modify, operate, or maintain a construction and demolition debris facility must obtain an annual construction and demolition debris facility installation and operation license ("C & DD license") from either the appropriate health district appearing on the approved list pursuant to R.C. 3714.09, or, if the facility is not located in such a district, from the Director of the Ohio Environmental Protection Agency. Appellee Stark County Combined General Health District Board of Health is the agency designated pursuant to the provisions of R. C. 3714.09 as being responsible for the inspection, licensing, and enforcement of standards governing construction and demolition debris facilities located within the district which encompasses the site operated by Appellant.

3. According to the record, Appellant has obtained an annual license to operate this site since at least 1991. (CR Item 7.)

4. Appellant Exit's most recent C & DD license was issued by Appellee Board in January of 2002. The Board revoked that license on July 17, 2002. It is the Board's revocation of Appellant's 2002 C & DD license that is at issue in the instant proceeding. (CR Item 7.)

5. The Certified Record contains numerous inspection checklists, correspondence and other

items relating to the Exit facility and dating from 1991. While all of these items were reviewed and considered in reaching our decision today, since we are addressing the revocation of Appellant's 2002 license, we find the following items, which present a chronology of the activities at this site during the past eight months, to be of particular relevance to the present proceedings:

(A) Correspondence dated January 2, 2002, from Randy Ruszkowski of the Environmental Health Division of the Stark County Health Department to Tim Williams of Exit, which noted a violation issued to Appellant as the result of a December 28, 2001 inspection he had conducted ("Waste is still present outside of the licensed area" - a violation of OAC 3745-400-11(F)(3)). The letter further indicated that Appellant had until February 1, 2002 to fully comply with the order. (CR Item 3-44.)

(B) An inspection checklist dated January 9, 2002 and signed by Randy Ruszkowski, which indicated, "Solid waste commingled with CD materials." [A violation of OAC 3745-400-11(F)(3).] (CR Item 3-45.)

(C) Correspondence dated February 20, 2002 from Randy Ruszkowski to Barbara Williams of Exit regarding a February 7, 2002 inspection he conducted along with Phil Revlock at which nine violations were noted. [OAC 3745-400-11(F)(3), 3745-400-11(F)(4), 3745-400-11(F)(4)(a), 3745-400-11(F)(4)(b), 3745-400-11(F)(4)(c), 3745-400-11(G), 3745-400-11(H), 3745-400-11(I)(5), 3745-400-11(L).]¹ (CR Item 5-26 through 5-27.)

¹ The Proposed Findings of Fact and Conclusions of Law filed with the Commission on behalf of Appellant Exit correctly point out that the letters sent as a result of the facility inspections conducted on February 7, 2002, February 15, 2002 and February 20, 2002 all appear to inflate the number of violations actually noted on the corresponding inspection checklist. However, we find it important to note that Appellant does not argue that any of the violations cited in the correspondence, but not appearing on the inspection checklist, did not actually occur,

(D) An inspection checklist dated February 15, 2002 and signed by Randy Ruszkowski, which indicated, inter alia, "Loads containing commingled solid waste." [The following violations were noted: OAC 3745-400-11(F)(3), 3745-400-11(G) and 3745-400-11(L).] (CR Item 3-46.)

(E) Correspondence dated February 27, 2002, from Randy Ruszkowski to Barbara Williams of Exit regarding a February 20, 2002 inspection conducted by Scott Winkler of the OEPA at which eleven violations were documented. [OAC Sections 3745-400-11(F)(3), 3745-400-11(F)(4), 3745-400-11(F)(4)(a), 3745-400-11(F)(4)(b), 3745-400-11(F)(4)(c), 3745-400-11(G), 3745-400-11(H), 3745-400-11(I)(4), 3745-400-11(I)(5), 3745-400-11(L) and 3745-400-11(O).] In a closing paragraph, Mr. Ruszkowski made particular note of the following violations:

During the inspection, it was noted that there was a considerable amount of solid waste was (*sic*) commingled in the loads that had been deposited at the working face. The solid waste needs to be immediately removed and disposed of at a licensed solid waste facility. A marked unloading zone in conjunction with pickers to remove any solid waste is needed to eliminate this issue. In addition, a leachate outbreak was observed along the south-eastern portion of the cell. I informed Neil to immediately contain, manage, and repair the leachate outbreak. (CR Items 3-47 and 3-48 through 3-49.)

(F) A February 25, 2002, memorandum from Kirk Norris, Unit Manager of Environmental Health for the Stark County Health Department to Robert Somrak, Environmental Health Director regarding a February 22, 2002 inspection he and Randy Ruszkowski had conducted at Exit C & D. In his memorandum, Mr. Norris set forth the eleven violations which were noted during the inspection. [OAC Sections 3745-400-11(F)(3), 3745-400-11(F)(4), 3745-400-11(F)(4)(a), 3745-400-11(F)(4)(b), 3745-400-11(F)(4)(c), 3745-400-11(G), 3745-400-

only that they are not specifically reflected on the checklists.

11(H), 3745-400-11(I)(4), 3745-400-11(I)(5), 3745-400-11(L) and 3745-400-11(O).] (CR Item 3-53 through 3-54.)

(G) Correspondence dated February 27, 2002, from Robert Somrak to Barbara Williams of Exit C & D in which he referenced the violations noted at the February 22, 2002 inspection of the Exit facility and indicated, **“If this matter is not corrected immediately it will be turned over to the Board of Health at their next regular meeting on March 13, 2002, for suspension and/or revocation of the facility’s operating license.”** (CR Item 3-55, bold in original.)

(H) A memorandum from William J. Franks, the Stark County Health Commissioner to the Board in which he documented a Health Commissioner’s hearing which was held at the Stark County Health Department on February 27, 2002 to determine whether the possible suspension or revocation of Appellant Exit’s C & DD license should be brought before the Board of Health at its March 13, 2002 meeting.² At this hearing, it was brought out that

² According to a July 17, 2002 memorandum prepared by Mr. Franks, the procedure for such hearings is as follows:

The protocol of the Board of Health is for the Health Commissioner to hold a hearing prior to the board meeting in which the Board is to hear the evidence for a denial, suspension, or revocation. The Health Commissioner may hear evidence from both sides and may accept any written or other evidence as he deems necessary. Following the hearing, the Health Commissioner will make a determination as to whether a public health threat exists from the continued operation of the licensed facility. The Health Commissioner may do one of the following: (1) Make a recommendation to the Board of Health to proceed with suspension or revocation procedures; (2) Give the licensed facility additional time to bring the facility into compliance and eliminate any public health threat; or (3) Determine that the existing violations at the facility are not of a nature that present a public health threat. (CR Item 2-2.)

“massive amounts of C & D waste with solid waste commingled was being disposed of at Exit.” Further, “major pieces of waste handling equipment were broken down so that the facility could not properly manage its waste stream.” And, finally, “[c]onditions at Exit C & D Landfill were described by sanitarians as deplorable.” At the conclusion of the hearing, it was agreed that certain measures would be implemented to correct the existing violations at the site and that the facility would voluntarily close until it was brought into compliance. Mr. Franks further indicated that he and his staff were “convinced that a good faith effort would be put forth by Exit and allowed them time to bring the facility into compliance before the March 13, 2002 Board of Health meeting.” (CR Item 2-2 through 2-3.)

(I) An inspection checklist dated March 12, 2002 and signed by Kirk Norris, which indicated, “Violations noted in letter dated February 21, 2002 have been corrected. Exit C & D is in substantial compliance w/ OAC 3745-400 Construction and Demolition Debris Regulations and Laws.” As a result of the facility achieving compliance, the possible suspension or revocation of Appellant’s license was not addressed at the March 13, 2002 meeting of the Board of Health. (CR Items 3-56 and 2-2.)

(J) Correspondence dated March 25, 2002, from Randy Ruszkowski to Barbara Williams at Exit C & D which outlined seven violations that had been noted at a March 22, 2002 inspection at the facility conducted by Kirk Norris. Mr. Ruszkowski indicated that, “All of the above violations need to be addressed immediately, and must be maintained on a daily basis.” [The following violations were noted: OAC Sections 3745-400-11(B)(12), 3745-400-11(F)(3), 3745-400-11(F)(4), 3745-400-11(F)(4)(a), 3745-400-11(F)(4)(c), 3745-400-11(G), 3745-400-

11(I)(5).] (CR Items 3-57 through 3-58 and 3-59.)

(K) Correspondence dated April 1, 2002, from Randy Ruszkowski to Barbara Williams which outlined three violations that had been noted at a March 27, 2002 inspection he had conducted. [OAC Sections 3745-400-11(F)(3), 3745-400-11(F)(4) and 3745-400-11(F)(4)(a).] Once again, Mr. Ruszkowski indicated, "All the above violations need to be addressed immediately, and must be maintained on a daily basis." (CR Items 3-61 and 3-62.)

(L) Correspondence dated April 8, 2002, from Randy Ruszkowski to Barbara Williams which outlined four violations that had been noted at an April 4, 2002 inspection he had conducted at Appellant's facility. [OAC Sections 3745-400-11(F)(3), 3745-400-11(F)(4), 3745-400-11(F)(4)(a), 3745-400-11(F)(4)(c).] In conclusion, Mr. Ruszkowski indicated:

The above violations need to be addressed immediately, and the facility must be in compliance on a daily basis. Due to the repetitiveness of these violations, I have informed the Stark County Health Department's Solid Waste Management of the situation. As a result, if the facility is not brought into compliance immediately, the Stark County Prosecutor's office will be notified to discuss further enforcement actions. (CR Items 3-63 through 3-64 and 3-65 through 3-66.)

(M) Correspondence dated May 6, 2002, from Randy Ruszkowski to Barbara Williams which outlined two violations noted at a May 2, 2002 inspection he had conducted at the facility and which indicated that the violations needed to be immediately addressed. [OAC Sections 3745-400-11(F)(1) and 3745-400-11(F)(3).] (CR Items 3-67 and 3-68.)

(N) A facility inspection conducted by Randy Ruszkowski and Kirk Norris on May 8, 2002 which revealed solid waste disposal violations that were noted and brought to the attention of the operators. Appellant was ordered to immediately remove solid waste from the working face of the landfill and to take it to a licensed facility. (CR Item 2-3; Testimony of Kirk

Norris, July 17, 2002 hearing before the Board.)

(O) A facility inspection report dated May 9, 2002, and signed by Randy Ruszkowski and Kirk Norris which noted three violations, and provided "Waste ordered removed on May 8, 2002 inspection still in working face and partially covered." [OAC Sections 3745-400-11(F)(3), 3745-400-11(F)(4)(a) and 3745-400-11(F)(4)(c).] Mr. Norris testified regarding this event at the July 17, 2002 adjudication hearing in this matter as follows:

. . . our inspection on May 8, waste was ordered out of the working face, OK, we're not talking about the staging area, we're talking about the working face on May 8. We ordered waste out on May 8. On May 9 we returned to the facility with the Ohio EPA. In 2 more hours, if we wouldn't have showed (*sic*) up when he (*sic*) showed up, the waste we ordered out May 8 would have been buried. Now, if it wasn't their intent, (unintelligible) if it wasn't their intent, fine, it was a mistake, somebody was at lunch, whatever. I don't care, but as a regulator you need to see where I am coming from. All trust and any relationship I've ever built with the facility is gone. Its gone, because that waste was not removed. It was a 24 hour period from the time I got back onto that site, and it was still in there and it was covered. It was 75 % covered with receipts from the next day, from May 9. (CR Item 3-69; Testimony of Kirk Norris, July 17, 2002 hearing before the Board.)

(P) Correspondence dated May 14, 2002, from Robert L. Somrak to Barbara

Williams in which he stated in relevant part as follows:

Exit C & D Landfill, Inc., has continually failed to maintain compliance with Ohio Administrative Code 3745-400, such that the operation presents a serious threat to the public's health and the environment. A 2002 history of non-compliance is presented in the attached addendum.

- Three violations for disposing of waste outside of licensed disposal area (since March 1998).
- 19 leachate management violations were issued since 1998.
- In 1999, Exit C & D Landfill Inc. illegally discharged leachate into the waters of the State.
- 9 out of 18 (50%) inspections conducted in 2002, resulted in the "acceptance of solid waste" violations.

- February 27, 2002, consideration of suspension for numerous violations was discussed in a Health Commissioner's hearing.
- 6 out of 18 (33%) inspections conducted in 2002, resulted in a violation for failure to deposit loads within a designated unloading zone.
- 5 out of 18 (27%) inspections conducted in 2002, resulted in a violation for failure to spread and compact the debris on the working face to avoid Clipping.
- 4 out of 18 (22%) inspections conducted in 2002, resulted in a violation for dirt, dust, or mud on public roads.
- 3 out of 18 (17%) inspections conducted in 2002, resulted in the violation for improper fire protection or lack of soil cover, approximately 10 acres of waste were exposed.
- Despite education of Exit Personnel to the contrary they have demonstrated a complete disregard to state regulations and Health Department orders.

Therefore, you are hereby required to attend a hearing with the Health Commissioner for possible revocation of Exit C & D Landfill, Inc.'s Construction and Demolition Debris Facility License. The Health Commissioner's hearing shall take place on May 20, 2002 at 10:00 am (*sic*)³, at the Stark County Health Department. (CR Item 3-70 through 3-71.)

6. On June 4, 2002, the hearing referenced in Mr. Somrak's May 14, 2002 correspondence was conducted by William J. Franks, the Stark County Health Commissioner. The following were in attendance at this hearing: Barbara Williams, Frank Codispoti, Bruce Levin, and Jacqueline Bollas Caldwell, legal counsel for Appellant Exit C & D; Scott Winkler from the Ohio EPA; and Robert Somrak, Kirk Norris, Randy Ruszkowski, William Franks and Deborah Dawson, legal counsel for the Stark County Health Department. In a July 17, 2002 memorandum from Mr. Franks to the Board, Mr. Franks summarized the evidence and arguments presented by Appellant Exit at the June 4, 2002, hearing as follows:

1. Exit stated that the volume and percentages of solid waste is not near the 15% stated by our staff and the Ohio EPA.
2. The landfill has operated in substantial compliance over the years and the Health Department has issued annual licenses.

³ At the request of counsel for Appellant, this hearing was rescheduled for June 4, 2002. (CR Item 1-4)

3. The facility has spent \$184,000 for a best practices leachate system.
4. In the past, there has been an allowable amount of solid waste in the C & D landfills [but recently] EPA has adopted a zero tolerance policy.
5. They state that an EPA memo allows them to pick out solid waste at the working face.
6. They have employed four additional pickers to sort out the solid waste.
7. They claim that they had only one leachate violation in the last year.
8. They are now rejecting loads that have solid waste commingled with the C & D.

Relative to the position of the Stark County Health Department, Mr. Franks summarized the issues presented by Mr. Robert Somrak, the Stark County Environmental Health Director as follows:

1. The health department has never allowed solid waste to be commingled with C & D. The 15% figure by the staff looks more like 50% to him.
2. Exit Inc. has been violated repeatedly for leachate problems over their years of operation.
3. Exit, Inc. is not operating properly, they are not allowed to separate solid waste in the working face. It must be done in the staging area. It is impossible to filter out all the solid waste in that manner.
4. Mr. Somrak believes that the facility is incapable of handling the volume and (*sic*) of waste that is needed to keep it financially secure. It does not appear that Exit Inc. has the financial resources to keep the facility operating within the parameters of the code.
5. Mr. Somrak believes that the health department has worked with Exit, Inc. and was more than understanding of the situation at the February 27, 2002 health commissioner's hearing. He stated, 'When closed for clean up, you cleaned up. But when the waste stream resumed, your problems resumed. That is the bottom line.' (CR Item 2-3 through 2-4.)

7. The Health Commissioner's Findings which resulted from this June 4, 2002 hearing, were explained in Mr. Franks' memorandum to the Board of Health as follows:

Having reviewed the information presented at the 6/4/02 hearing, I have determined that the amount of solid waste and unknown materials that are buried in Exit C & D Landfill, Inc. presents a public health threat that warrants the Board of Health to consider the revocation or suspension of the license of the license at its July 17, 2002 meeting.

Further, Mr. Franks offered the following rationale for his recommendation:

The violations for accepting unauthorized materials (i.e. solid wastes) and leachate containment issues have been recurring violations at Exit C & D Landfill, Inc.. It is unknown how much solid waste has actually been buried at this facility nor is it known how much leachate might be produced by the solid waste in this facility. This facility is not designed nor licensed for the disposal of solid wastes. Improperly disposed solid wastes are a public health threat to the ground and surface waters from the leachate that they produce. (CR Item 2-2 through 2-4.)

8. On July 17, 2002, an adjudication hearing was held by the Stark County Combined General Health District Board of Health regarding the possible revocation or suspension of Appellant Exit's 2002 C & DD license. At this hearing, sworn testimony was offered and evidence was submitted by Appellant Exit and by environmental employees of Appellee Board. The testimony and evidence offered on behalf of Appellee Board centered upon the numerous violations set out at length above. Specifically, Robert Somrak, the Director of Environmental Health for the Stark County Health Department testified that, "Based upon the record of compliance and violation record, it is my professional opinion that a significant amount of solid waste has been illegally disposed of by Exit C & D." Mr. Somrak also testified that Appellant has not operated in accordance with its own approved plans; i.e., dumping waste outside of approved area, presence of leachate, solid waste violations. (CR Item 9, testimony Somrak.)

9. Conversely, in addition to the evidence and arguments presented at the June 4, 2002 Health Commissioner's hearing, Appellant Exit also offered testimony and evidence to support the following contentions at the adjudication hearing held on July 17, 2002:

1. Exit C & D has historically been operated in substantial compliance with the relevant statutes and regulations as evidenced by the fact that their annual licenses continue to be renewed, most recently in January of 2002. (Testimony, Barbara Williams.)

2. In recent years, Appellant has implemented additional and, in some cases, very costly measures in order to achieve substantial compliance with the applicable C & DD regulations and to improve the operation of the landfill (e.g., \$184,000 spent to complete its leachate system, \$50,000 to install ground water monitoring well, \$146,230 to complete ground water diversion trench and implement leachate re-circulation plan, \$343,000 to purchase equipment [one compactor, three scrapers, two dozers and one loader] and at least \$343,000 to haul leachate in 2001-2002.). (CR Item 4-1 through 4-5 and testimony, Patrick Loper, Barbara Williams.)

3. Appellant's difficulties are attributable to out-of-state waste being brought to the facility. At one point, Appellant was rejecting 75% of the out of state loads because they contained unacceptable waste. (Testimony, Barbara Williams.)

4. Between May, 2002 and July 17, 2002, Minerva C & D Landfill, which is also located within Appellee Board's health district, was cited for two solid waste violations, while Appellant was cited for only one. Despite this, Appellant's license was revoked, while Minerva was permitted to implement changes to come into substantial compliance. (CR Item 5, Exhibit M; testimony, Barbara Williams.)

10. At the conclusion of the adjudication hearing, a resolution was unanimously adopted by the Board to revoke Appellant's C & DD license, effective immediately. The reasons cited for the revocation were:

1. For not operating the landfill in accordance with Ohio rules, as presented by the health department staff, and not operating the landfill in accordance with its own approved plan.

2. There is a lack of management over the landfill and its own employees, causing a recurring violation of Ohio rules.

3. The large number of and the severity of the violations of the Ohio rules between February of 2002 and May of 2002. Many of these violations are repeat violations dating back to March of 1996. (CR Item 9-56 through 9-58.)

11. On July 25, 2002, Appellant Exit timely filed an appeal of its license revocation to this Commission in which it sets forth ten assignments of error.⁴ (ERAC Case No. 765158, Item A.)

⁴ The Commission notes that Appellant incorporates several constitutional challenges into the assignments of error contained in its Notice of Appeal. As an administrative agency, the Commission does not have jurisdiction to entertain constitutional challenges. Accordingly, these issues will not be dealt with in the instant opinion. (See e.g., Kays v. Schregardus (2000), 138 Ohio App. 3d 225.)

CONCLUSIONS OF LAW

1. Pursuant to R. C. 3745.05, the statutory duty of review imposed upon the Commission herein is a determination of whether the action of Appellee Stark County Combined General Health District Board of Health in revoking the 2002 C & DD license of Appellant Exit was unlawful or unreasonable.

2. "Unlawful" means that the action taken by the Board was not in accordance with the relevant, applicable law. "Unreasonable" means that the action was not in accordance with reason, or that it has no valid factual foundation. It is only in those cases where the Commission can find from the Certified Record filed in the case that there is no valid factual foundation for the Board's action, or that the action was not in accordance with the relevant law, that the action under appeal can be found to be unreasonable or unlawful. (Citizens Committee to Preserve Lake Logan v. Williams, 56 Ohio App. 2d 61 [1977].)

3. Conversely, where the Certified Record before the Commission demonstrates that the action taken by the Board was reasonable and lawful, the Commission must affirm the action. In such an instance the Commission is not permitted to substitute its judgment for that of the Board. (Citizens Committee, supra.)

4. On July 24, 1990, Ohio Revised Code Chapter 3714 was enacted to establish a comprehensive state program for the licensing, regulation and inspection of construction and demolition debris facilities, such as the one at issue herein.

5. Revised Code Section 3714.02 specifically required the director of the Ohio EPA to adopt rules governing construction and demolition debris facilities, as well as for the inspection and

issuance of licenses for those facilities.

6. Ohio Administrative Code Section 3745-37-03 sets forth the criteria to be used in issuing C & DD licenses. Specifically, and of particular interest in the instant action, is OAC 3745-37-03(C) which provides that a licensing authority may not issue an annual C & DD license unless the applicant has operated the facility in substantial compliance with all applicable statutes and regulations.

7. Furthermore, R.C. Section 3714.10 provides in relevant part:

The board of health of the health district in which a construction and demolition debris facility is located . . . may deny, suspend, or revoke a license for the facility under section 3714.06 of the Revised Code for violation of any section of this chapter, a rule adopted under it, or a term or condition of the facility's license.

8. As stated above, Appellee Stark County Combined General Health District Board of Health is the board of health empowered by R.C. 3714.10 to deny, suspend or revoke C & DD licenses in the district which encompasses Appellant Exit's facility. (Also see R.C. 3714.09, "Approved list of health districts; . . .")

9. The phrase "a rule adopted under it" in R.C. 3714.10 clearly encompasses the rules contained in OAC Chapter 3745-400. Those rules, entitled, "Disposal Methods for Construction and Demolition Debris: Site and Facility Requirements," set forth the criteria relating to the proper operation of C & DD facilities.

10. As set out at length above, the evidence demonstrates that since the issuance of Appellant Exit's 2002 C & DD license, the facility has been cited for numerous and varied violations of OAC Chapter 3745-400. Indeed, on February 27, 2002, approximately five months prior to the revocation at issue herein, the Health Commissioner conducted a hearing to consider the

) revocation of Appellant's license. At the conclusion of this hearing, the Health Commissioner and his staff indicated they were confident that Appellant would make a "good faith effort" to bring the facility into compliance. Following the February hearing, the facility did achieve compliance and the possible revocation or suspension of Appellant's license was not addressed at the March 13, 2002 Board meeting. However, only nine days later, on March 22, 2002, an inspection was held and the facility was cited for seven violations. Additional violations were again noted at inspections held on March 27, 2002, April 4, 2002, May 2, 2002 and May 8, 2002. Finally, at an inspection held on May 9, 2002, waste which had been ordered to be removed on the previous day had not been removed and, in fact, according to the testimony of Mr. Norris, had been "75% covered with receipts from the next day, . . . " In sum, it appears to the Commission that there can be no dispute that Appellant has violated rules adopted under section 3714.06.

11. Additionally, there was testimony offered at the July 17, 2002 adjudication hearing in this matter by the Stark County Environmental Health Director Robert Somrak to indicate that Appellant Exit's conduct also constituted a violation of terms or conditions of its license.

12 Therefore, the issue before the Commission today is whether the record before it supports a finding that Appellee Board acted reasonably and lawfully in using these violations of Ohio regulations and/or the terms and conditions of its license to justify revocation of Appellant Exit's 2002 C & DD license pursuant to R.C. 3714.10.

13. Appellant contends that the Board did not produce any evidence that solid waste has been incorporated into Appellant's landfill, nor is there a factual foundation or evidence in the record of any harm to the environment at Appellant's facility. We disagree and find that the numerous

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inspection checklists, in conjunction with the sworn testimony of the individuals who conducted those inspections, regarding the conditions which were found at the Exit facility, is reliable evidence that both solid waste has been incorporated into Appellant's landfill and that harm has resulted to the environment because of Appellant's practices.

14. Appellant further asserts that its facility is being operated in substantial compliance with the applicable statutes and regulations and, therefore, pursuant to OAC 3745-37-03(C) and the holding in Fairfield Sanitary Landfill v. Fairfield County District Board of Health (Franklin Cty. 1990), 68 Ohio App. 3d 761, its license should not have been revoked. Once again, we cannot agree.

15. First, while admittedly, OAC 3745-37-03(C) provides that a license shall not be issued unless the facility has been in substantial compliance with all applicable statutory and regulatory provisions, we find R.C. 3714.10, which grants very broad revocation authority to licensing entities, to be the controlling statute. As set out above, this section, on its face, would appear to allow the Board to revoke Appellant's license for the, "violation of any section of this chapter, a rule adopted under it, or a term or condition of the facility's license." Clearly, many such violations have been documented at Appellant's facility over the years and, most significantly, in the past eight months.

16. Furthermore, reading the Franklin County Court of Appeals decision in Fairfield Sanitary Landfill, supra, in concert with OAC 3745-37-03(C), we would agree with Appellant that, arguably, substantial compliance, as opposed to strict compliance, would appear to be a more reasonable standard to be used in evaluating whether to revoke a C & DD license. However, we

cannot agree with Appellant's contention that the Board acted unreasonably or unlawfully in determining that the numerous violations for which Appellant has been cited justified the revocation of Appellant's license, especially in light of repeated opportunities to correct the violations and warnings regarding the potential consequences of not correcting them.

17. Appellant also contends that it is being treated more stringently than other C & DD landfills in Appellee Board's district and that this disparate treatment was unlawful and unreasonable. To support this contention, Appellant presented evidence that similar violations for which it has been cited have occurred at other landfills within Appellee Board's jurisdiction, however, these landfills have not had their licenses revoked. While this may, or may not, be true, the record before the Commission clearly demonstrates that violations of Ohio regulations have occurred at Exit C & D on which the Board based its decision to revoke Appellant's license. Thus, we find a factual basis for the Board of Health's decision to revoke Appellant's 2002 C & D license. Further, we may not substitute our judgment for that of the Board which possesses historical and factual information regarding all of the facilities in its district, to which the Commission is not privy.

18. In sum, although we are sympathetic to the attempts Appellant has made in the past to bring its facility into compliance with the applicable statutes and regulations, we find that the number and repetitive nature of violations at Appellant's facility, coupled with the type of those violations, supports a finding that Appellee Board acted both reasonably and well within the mandates of the law in reaching its decision to revoke Appellant's license.

FINDINGS OF FACT AND
FINAL ORDER

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19. In light of the foregoing, we find that Appellee Board's July 17, 2002 revocation of Appellant Exit C & D's annual license was both reasonable and lawful and should be affirmed.

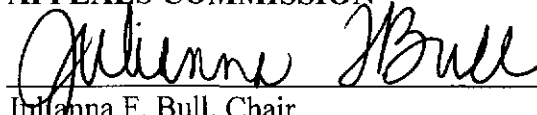
FINAL ORDER

The Commission finds that Appellee Board's July 17, 2002 revocation of Appellant Exit C & D's annual license was both reasonable and lawful and is hereby AFFIRMED.

The Commission, in accordance with Section 3745.06 of the Revised Code and the Ohio Administrative Code 3746-13-01, informs the parties that:

Any party adversely affected by an order of the Environmental Review Appeals Commission may appeal to the Court of Appeals of Franklin County, or, if the appeal arises from an alleged violation of a law or regulations to the court of appeals of the district in which the violation was alleged to have occurred. Any party desiring to so appeal shall file with the Commission a Notice of Appeal designating the order appealed from. A copy of such notice shall also be filed by the Appellant with the court, and a copy shall be sent by certified mail to the Director of Environmental Protection. Such notices shall be filed and mailed within thirty days after the date upon which the Appellant received notice from the Commission by certified mail of the making of an order appealed from. No appeal bond shall be required to make an appeal effective.

**THE ENVIRONMENTAL REVIEW
APPEALS COMMISSION**


Julianna F. Bull, Chair


Toni E. Mulrane, Vice-Chair

Entered in the Journal of the
Commission this 22nd
day of August, 2002.


Mary J. Oxley, Executive Secretary

FINDINGS OF FACT AND
FINAL ORDER

-20-

Case No. ERAC 765158

COPIES SENT TO:

EXIT C & D LANDFILL, INC.

[CERTIFIED MAIL]

THE STARK COUNTY BOARD OF HEALTH

[CERTIFIED MAIL]

Jacqueline Bollas Caldwell, Esq.

Deborah A. Dawson, Esq.