IN THE SUPREME COURT OF OHIO

STATE EX REL. ROCKY RIDGE DEVELOPMENT, LLC 3793 Silica Road Sylvania, Ohio 43560	:	CASE NO.
CUSTOM ECOLOGY OF OHIO, INC. D/B/A STANSLEY INDUSTRIES, INC. 3793 Silica Road Sylvania, Ohio 43560	:	ORIGINAL ACTION FOR A WRIT OF PROHIBITION
Relators,	:	
vs.	:	
HONORABLE BRUCE WINTERS Ottawa County Court of Common Pleas 315 Madison Street, #301 Port Clinton, Ohio 43452,	:	
Respondent.	:	

COMPLAINT FOR EXPEDITED ALTERNATIVE WRIT AND WRIT OF PROHIBITION

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For their Complaint for Expedited Alternative Writ and Writ of Prohibition, Relators Rocky Ridge Development, LLC and Custom Ecology of Ohio, Inc. d/b/a Stansley Industries, Inc. state as follows:

I. INTRODUCTION[1]

1. This original action seeks an expedited alternative writ[2] and a peremptory writ of prohibition from this Court forbidding Respondent Honorable Bruce Winters, Judge of the Ottawa County Court of Common Pleas, from exercising jurisdiction in *Benton Township v. Rocky Ridge Development, LLC, et al.*, Ottawa C.P. Case No. 17 CV 064 (**"Action"**). Relators Rocky Ridge Development, LLC (**"RRD"**) and Custom Ecology of Ohio, LLC d/b/a Stansley Industries, Inc. (**"Stansley"**) are beneficially using spent lime from the City of Toledo, Ohio's (**"Toledo"**) drinking water treatment plant as authorized by permits issued by Craig Butler, Director of the Ohio Environmental Protection Agency (**"OEPA"**) on RRD's property in Benton Township, Ohio (**"Township**"). Statewide general law regulates the beneficial reuse of drinking water treatment material (**"DWTM"**), including spent lime. The determination of how and where such beneficial reuse may occur, and by whom, is vested exclusively with OEPA and any challenges to its determinations must be made in the Environmental Review Appeals Commission (**"ERAC"**), which has exclusive jurisdiction over such matters.

2. Notwithstanding the exclusive jurisdiction of the EOPA and ERAC, on February 23, 2017, the Township filed a Verified Complaint in the Ottawa County Court of Common Pleas and a Motion for Temporary and Preliminary Injunctive Relief halting Relators'

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[1] Attached as **Exhibit A** is the supporting Affidavit of John Taddonio as required by S.Ct.Prac.R. 12.02(B)(1) ("**Taddonio Aff.**"). True and correct copies of Exhibits B to N are also attached hereto.

[2] Contemporaneously with this filing, Relators have filed their Motion for Emergency Stay and Expedited Alternative Writ pursuant to S.Ct.Prac.R. 4.01(C) and 12.

entire operation. (**Exhibits B and C**.) Respondent issued a Temporary Restraining Order ("**TRO**") that same day enjoining and restraining Relators "from operating in Benton Township until and unless they are in compliance with the Benton Township Zoning Resolution and the laws of the State of Ohio." (**Exhibit D**.) Respondent also scheduled a preliminary injunction hearing for Tuesday, March 7, 2017. By entering the TRO and intending to continue to a preliminary injunction hearing, Respondent has intruded on matters over which the OEPA and ERAC have exclusive jurisdiction circumventing Ohio's statewide regulatory scheme governing the beneficial use of spent lime.

3. On March 1, 2017, Craig Butler, Director of the Ohio Environmental Protection Agency (**"OEPA"**), filed a Motion to Intervene in the action pursuant to Civil Rule 24(B) "for the limited purpose of adjudicating the court's jurisdiction over the permitting and enforcement authority of the director and adjudicating the issue of whether the state statutes at issue preempt the local zoning ordinances." (**Exhibit E**.) The OEPA also tendered a Motion to Dismiss the action because (1) ERAC "has exclusive jurisdiction over the director's actions, including issuance of the LAMP" and (2) "the local zoning ordinances are preempted by state law." (**Exhibit E**.)

4. On March 2, 2017, Relators each filed Motions to Dismiss raising the same jurisdictional challenge. (**Exhibits F and G**.)

5. As of the time of this filing, Respondent has not taken any action on the Motion to Intervene or any of the Motions to Dismiss even though the preliminary injunction hearing is scheduled for Tuesday, March 7, 2017 and Relators specifically requested an expedited ruling on the Motions to Dismiss for that reason.

6. Immediate relief is required because Respondent intends to proceed with a preliminary injunction hearing on matters over which Respondent lacks subject matter jurisdiction.

Relators request the Court to issue an expedited alternative writ directing Respondent to take no further action in the Action, including enforcement of the TRO, pending the Court's determination of whether a preemptory writ of prohibition should issue, which Relators also request.

II. JURISDICTION

7. This Court has original jurisdiction to issue a writ of prohibition to lower courts pursuant to Article IV, Section 2(B)(1)(d), of the Constitution of the State of Ohio.

III. PARTIES

8. Relators are permittees under a Land Application Management Plan issued on November 13, 2014 by Director Craig Butler of the Ohio Environmental Protection Agency ("**2014 LAMP**") and a modified Land Application Management Plan issued on February 14, 2017 by the OEPA ("**2017 LAMP**") which "permit the beneficial reuse of lime residuals in a soil blend as general fill" at RRD's property. (**Exhibits H and I**.) RRD is also an applicant to the OEPA for an Integrated Alternative Waste Management Plan ("**IAWMP**") which would further permit and regulate blending of lime residuals with native soils for the beneficial use as controlled fill material at RRD's property. (**Exhibit J**.) RRD's property is a quarry previously surface mined for over a century and for which Surface Mining Permit No. IM-320 remains active. Relators' operations on the property will also satisfy the surfacing mining reclamation requirements for the quarry. The property includes the quarry itself as well as adjacent undeveloped property.

9. Respondent Judge Bruce Winters is a duly elected judge of the Ottawa County Court of Common Pleas. The Ottawa County Common Pleas Court is the judicial body for Ottawa County, Ohio. Respondent is empowered to decide only those cases and controversies over which this Court has proper subject matter jurisdiction.

IV. FACTS

10. Toledo operates a water treatment plant to provide drinking water to Toledo and surrounding areas. In the process of treating water drawn exclusively from Lake Erie, Toledo utilizes lime as a DWTM. In 2016, Toledo contracted with Stansley for the "removal and disposal" of the DWTM, a prerequisite to Toledo constructing water treatment upgrades mandated by the OEPA. Relators are in the process of removing and beneficially using the DWTM at RRD's property pursuant to the 2014 LAMP and the 2017 LAMP.

11. On November 13, 2014, the OEPA issued the 2014 LAMP which "authorizes Stansley to beneficially use lime residuals [*i.e.* DWTM] in a soil blend for general fill" subject to the conditions of the 2014 LAMP. On February 14, 2017, the OEPA the 2017 LAMP adding RRD as a permittee and further defining the beneficial use as "to increase the elevation and improve drainage in existing low lying areas." Notably, the LAMP authorizes RRD's operation only outside of – not in – the quarry itself.

12. On July 22, 2016, RRD also applied to the OEPA for an IAWMP, which has not yet been approved by OEPA. If issued, the IAWMP would further authorize and regulate the blending of DWTM with native soils for the beneficial use as controlled fill material at RRD's property, including the quarry itself.

13. Township residents have expressed considerable opposition to the beneficial use project operated by Relators. Certain residents have appealed the 2017 LAMP to ERAC. (**Exhibit K**.) The Township has indicated it also intends to appeal the 2017 LAMP to ERAC. The Township Zoning Inspector and the Township's Board of Trustees have both written letters to the OEPA objecting to Relators' operations under the 2014 and 2017 LAMP and the potential issuance of the IAWMP. (**Exhibits L and M.)**

14. On February 23, 2017, the Township filed a Verified Complaint in the Ottawa County Court of Common Pleas alleging that Relators' operations on the property are in violation of state law and the Township's Zoning Resolution (**"Resolution"**). The Township's Verified Complaint challenges Relators' actions on two general bases: (1) Relators' operations are occurring under improper or inapplicable permits from the OEPA (Ver. Compl. ¶¶ 4, 7, 14; and 43) and (2) Relators' operations violate the Resolution (Ver. Compl. ¶¶ 26, 28, 30, 40, 41, 43, 51).

15. The Township contemporaneously filed its Motion for Temporary and Preliminary Injunctive Relief (**Exhibit C**). Respondent issued a Temporary Restraining Order the same day halting all operations of Relators:

> IT IS THEREFORE ORDERED, AJUDGED AND DECREED, that the defendants and any affiliated company owned or controlled by the defendants or their principal shareholders, and all persons acting on behalf or in concert with the defendants, *be enjoined and restrained from operating in Benton Township* until and unless they are in compliance with the Benton Township Zoning Resolution and the laws of the State of Ohio. *This includes but is not limited to the digging of a borrow pit and/or constructing a farm pond, spreading, burying or mixing of waste, removing topsoil where such removal is a conditional use, changing the drainage of the property, placing any material into waters of the state and/or otherwise violating the zoning laws of Benton Township.* (Emphasis added.)

(**Exhibit D**.) The Court also scheduled a hearing on the Township's request for a preliminary injunction for March 7, 2017.

V. RESPONDENTS' LACK OF SUBJECT MATTER JURISDICTION

16. The Court patently and unambiguously lacks subject matter jurisdiction.

> It is well-settled that the statutory procedure for review of OEPA actions set forth in R.C. Chapter 3745 is exclusive and that courts of common pleas are without jurisdiction to proceed in actions for declaratory and injunctive relief involving controversies under R.C. Chapter 3745.

State ex rel. Maynard v. Whitfield, 12 Ohio St.3d 49, 50, 465 N.E.2d 406 (1984) (citing *State ex rel. Williams v. Bozarth,* 55 Ohio St. 2d 34, 377 N.E.2d 1006 (1978) and *Warren Molded Plastics, Inc. v. Williams*, 56 Ohio St. 2d 352, 384 N.E.2d 253 (1978)). By stopping all of Relators' permitted activities pursuant to the TRO and intending to consider a further preliminary injunction doing the same, the Court has usurped the exclusive jurisdiction of the OEPA and ERAC. Second, the Court further lacks subject matter jurisdiction because the applicable sections of the Resolution relied upon by the Township are preempted by statewide general law permitting beneficial reuse of DWTM.

A. The Court Lacks Subject Matter Jurisdiction to Consider Matters Within the Exclusive, Original Jurisdiction Of ERAC.

17. The OEPA has exclusive responsibility for administering and enforcing Ohio's environmental laws, including those applicable to the beneficial use of DWTM. R.C. 3745.01. ERAC "has exclusive, original jurisdiction over any matter which may . . . be brought before it," including adoptions, modifications, issuances, or revocations of any orders or permits by the OEPA and third party challenges to those actions. R.C. 3745.04. Because the Township's claim "is in actual effect a claim that the order of the OEPA should now be reversed because the presence of [DWTM] is a danger to health," Respondent lacks subject matter jurisdiction. *Cincinnati ex rel. Crotty v. Cincinnati*, 50 Ohio St.2d 27, 29-30, 361 N.E.2d 1340 (1977).

i. The Action Directly Challenges the 2014 and 2017 LAMPs Even Though Those Matters Are Subject to the Exclusive Original Jurisdiction of ERAC.

18. The Township's Verified Complaint is riddled with allegations that the OEPA's underlying issuance of the LAMPs were improper and its management of RRD's operations are inadequate. (Verified Complaint, at ¶¶7, 11, 14, 17, 27, 43). Specifically, the Township questions the OEPA's determination in the 2014 LAMP that utilizing DWTM to "make grade…and create vegetative growth" was a beneficial use. (*Id*., at ¶7). In fact, the Township outright denies

that the stated beneficial use is proper under Ohio law. (*Id.*). Furthermore, the Township alleges that OEPA issued the LAMPs to incorrect parties (*Id.*, at ¶¶7, 11); failed to monitor RRD's activities on the property for compliance with the 2017 LAMP (*Id.*, at ¶¶14, 17); failed to properly classify DWTM as "solid waste" (*Id.*, at ¶27); and improperly permitted RRD to release contaminants into the waters of the state (*Id.*, at ¶43). Such allegations are head-on challenges to the OEPA's authority in issuing the permits and monitoring the activities undertaken pursuant to said permits; these arguments must be made to ERAC.

19. While the Township characterizes its allegations in terms of its zoning authority by referring to the public health and safety, these references are ineffective in establishing jurisdiction because the State has the same interests. (*See e.g., id.*, at ¶¶17, 43); *see Bd. of Cty Comm'rs v. Columbus*, 26 Ohio St. 3d 179, 182, 497 N.E.2d 1112 (1986) ("It is fundamental that the protection and preservation of the public health is a prime governmental concern and thus a function of the state."). Not only is the OEPA responsible for public health and safety, the OEPA is specifically tasked by the legislature to "prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the state." R.C. 3745.011(B).

20. The Township's Verified Complaint alleges that dangers to public health and safety exist as the result of the failure of the OEPA to properly perform its functions; predominantly, its duty to issue proper permits and monitor permitted uses for violations. Both the legislature and Ohio courts have explicitly placed this category of challenge – *i.e.*, the propriety of OEPA's actions –within the exclusive, original jurisdiction of ERAC. The Township's Verified Complaint amounts to an impermissible collateral attack on the OEPA's decisions under the guise of enforcing zoning regulations. The Township cannot independently prosecute the alleged violations by RRD of the

2014 and 2017 LAMPs (and disregard ERAC) because the claims raised in the Verified Complaint "do not fall within that narrow class of acts that are actionable in a court of common pleas." *Bates v. GSC Principals,* 6th Dist. Lucas No. L-07-1185, 2008-Ohio-2211, ¶21.

ii. Respondent Lacks Subject Matter Jurisdiction to Grant Remedies Available for the OEPA or ERAC

21. Exclusive jurisdiction over "the lawfulness and reasonableness of the [OEPA's] actions" rests with ERAC, and the underlying administrative code provides for an administrative stay of Relators' operations pending review by ERAC. While typically the filing of an appeal with ERAC will not stay the execution of the action being appealed, Ohio Adm. Code 3746-5-13(A) explicitly provides that upon motion of a party, "[ERAC] may suspend or stay such execution pending immediate determination of the appeal…" The availability of administrative remedies before ERAC further illustrate Respondent's lack of subject matter jurisdiction to issue the TRO. *See State ex rel. Sierra Club v. Koncelik*, 10th Dist. Franklin No. 05-AP-643, 2005-Ohio-6477; *Brooks v. Canfield*, 34 Ohio App.2d 98, 108, 296 N.E.2d 290 (7th Dist.1972).

22. That the Township is not currently a party to any actions before ERAC is of no import. Ohio Adm. Code 3746-5-04 specifically provides a procedure to allow a party to intervene in an ongoing appeal to ERAC. Furthermore, courts have affirmed that interested parties, independent of those involved with the underlying OEPA proceeding, have standing to initiate appeals before ERAC. *See City of Garfield Hts ex rel. Kozelka v. City of Garfield Hts.*, 8th Dist. Cuyahoga No. 92511, 2009-Ohio-5009, ¶¶35-42. The existence of such standing (even if not utilized) requires that a party bring claims which fall under the jurisdiction of ERAC to that administrative body before seeking relief in the judicial system. *Id.* at ¶24; *see also Gray v. Willey Freightways*, 89 Ohio App.3d 355, 362, 624 N.E. 2d 755 (6th Dist. 1993) (appellate court affirmed dismissal for lack of subject matter jurisdiction over complaint for injunctive and declaratory relief

due to failure to exhaust administrative remedies; the administrative decision was appealable to courts and thus, provided an adequate remedy at law). In sum, jurisdiction for the relief requested by the Township rests exclusive with the OEPA and ERAC, not Respondent.

iii. The Jurisdictional Conflict is Real, Not Hypothetical: The OEPA Has Directed RRD to Complete Work on The Property That The TRO Prohibits.

23. On February 27, 2017, the OEPA issued a Notice of Violation ("**NOV**") to Relators mandating that they undertake certain operations on the property pursuant to OEPA's statutory authority and the requirements of the permits issued to Relators. Compliance with the NOV will violate the TRO, and vice-versa. (**Exhibit N**.)

24. The NOV requires Relators to operate on the property to address soil stabilization requirements, previously discussed with the OEPA and required under the terms of the National Pollutant Discharge Elimination System (**"NPDES"**) permit applicable to the property. The NOV states:

> **Requested Action:** Stabilize all inactive areas per the above tables. The storm water pollution prevention plan (SWP3) for this site shall have instructions for winter stabilization. The areas of concern include the berms around the ponds where gullies and rills had formed, berms around the area of the former farmland, and any other area that remains dormant for more than 14 days. Areas that had been permanently seeded but do not have 70% or more permanent stabilization shall be temporarily stabilized until permanent stabilization can be utilized.
>
> The area of the former farmland on the southeast corner, the berms on the south side of the site bordering the former farmland, and any other area of the site that drains to the bedrock fissure on the south side of the site, needs to be graded and stabilized as soon as possible.

NOV at 2-3. The NOV further requires Relators to "provide documentation to Ohio EPA of the actions taken and/or will be taken to resolve the [NOV]" with fourteen (14) days of receipt. If

Relators fail to comply, they face "an administrative or civil penalty" from the OEPA. (NOV at 3.)

25. Relators will inevitably violate one order or the other. (Exhibit D, ¶ 5.) On the one hand, Respondent has "enjoined and restrained" Relators "from operating in Benton Township." On the other hand, the OEPA's NOV directs Relators to operate in Benton Township to address the soil stabilization mandates. Relators currently face a dilemma: Should Relators (i) comply with the TRO, violate the NOV, and incur enforcement action by the OEPA or (ii) comply with the NOV, violate the TRO, and incur enforcement action by Respondent? The fact Relators face such a "choice" drives home Respondent's patent and unambiguous lack of subject matter jurisdiction.

26. Any suggestion that Relators' alternative remedy is to request permission from Respondent to conduct the work required by the NOV only amplifies the conflict. If the suggestion were followed, every permit, condition, directive, order, or NOV issued by the OEPA to Relators would have to be reviewed by Respondent, something not required or allowed by Ohio law. And, what if Respondent declines such permission? The very notion makes the point: Respondent lacks subject matter jurisdiction over this action.

B. The Court Further Lacks Subject Matter Jurisdiction Because the Applicable Portions of the Township's Zoning Resolution is Preempted by State Statute.

i. Section 103.7 of the Resolution is the only section regulating DWTM in the Township.

27. The Resolution has only a single section purporting to regulate DWTM. Specifically, Section 103.7 of the Resolution states:

> The dumping and/or burying and/or spreading, in any manner of sewage and/or sewage sludge and/or industrial waste is fully prohibited in all thirteen (13) zoning classifications listed herein.

The terms "sludge," "sewage sludge," and "industrial waste" are not defined by the Resolution, but are terms defined by statewide law. R.C. 6111.01(C) specifically defines "industrial waste" as "any liquid, gaseous, or solid waste substance resulting from . . . the development, processing, or recovery of any natural resource . . . ." More generally, R.C. Chapter 6111 governs "disposal of . . . industrial waste." The DWTM at issue here – spent lime from the City of Toledo's water supply treatment process – is an "industrial waste" regulated under R.C. Chapter 6111.

28. Section 103.7 of the Resolution is the *only* section of the Resolution to reference "industrial waste" in any way. As such, Section 103.7 of the Resolution is the *only* section of the Resolution applicable to the beneficial reuse of DWTM in the Township.[3]

29. The Supreme Court of Ohio and the Sixth District Court of Appeals have repeatedly stated:

> 'zoning ordinances are in derogation of the common law. They deprive a property owner of uses of his land which he would otherwise be entitled and, therefore, when interpretation is necessary, such enactments are normally construed in favor of the property owner.'

Eckel v. Swanton Twp. Bd. of Trustees, 6th Dist. No. L-03-1289, 2004 Ohio 4855, ¶ 18 (citing *Cash v. Brookshire United Methodist Church*, 61 Ohio App.3d 576, 579, 573 N.E.2d 692 (10th Dist. 1988); and *In re Appeal of University Circle, Inc.*, 56 Ohio St.2d 180, 383 N.E.2d 139 (1978)). The Supreme Court of Ohio has further stated:

[3] While the Township also alleges (i) violation of a pond permitting process set forth at Section 706 of the Resolution and (ii) "topsoil removal" without a conditional use permit, the TRO requested by the Township and granted by Respondent stopped Relators' *entire* permitted beneficial reuse project, not just digging a pond or removing topsoil. The Township requests the same relief in the form of a preliminary injunction. Moreover, because the Township relies on these zoning provisions to prohibit the permitted operations of Relators, those provisions are also preempted thereby robbing Respondent of subject matter jurisdiction.

> "Restrictions on the use of real property by ordinance, resolution or statute must be strictly construed, and *the scope of the restrictions cannot be extended to include limitations not clearly proscribed."*

Saunders v. Clark County Zoning Dept., 66 Ohio St.2d 259, 261, 421 N.E.2d 152 (1981) (emphasis added).

30. Because Section 103.7 is the only section of the Zoning Resolution expressly referencing "industrial waste," it is necessarily the only section regulating it.

> [U]nder the general rule of statutory construction, *expressio unius est exclusio alterius*, 'the expression of one or more items of a class implies that those not identified are to be excluded.'

State ex rel. Salim v. Ayed, 141 Ohio St.3d 129, 2014-Ohio-4736, 22 N.E.3d 1054, ¶ 21. As stated in *Waltco Truck Equip. Co. v. Tallmadge Bd. of Zoning Appeals*, 40 Ohio St.3d 41, 43, 531 N.E.2d 685 (1988):

> The General Assembly, in enacting R.C. 713.11, was surely aware that building permits are often granted by zoning inspectors. By using the specific term "refusal," the legislature has expressed its intent that the jurisdiction of the board be limited to hearing appeals from refusals of building permits. The rule of statutory construction is that an expression of one specific power implies the intent to exclude other powers (*expressio unius est exclusio alterius*).

31. Having expressly regulated "industrial waste" (*i.e.*, DWTM) one way – banning it everywhere – the Township cannot now imply some other regulation. The Township's Resolution contains no regulation on the manner, means, or method by which industrial waste may be dumped, buried, or spread. It makes no provision for its allowance in any district either as a permitted or conditional use.[4] Having explicitly banned it under Section 103.7, the Township cannot attempt to regulate it under tangential sections of the Resolution.

[4] The Resolution's allowance of "waste disposal" as a conditional use in an "M-3" Heavy Industrial district cannot apply since "industrial waste" is defined and regulated specifically and only in Section 103.7 of the Resolution where "waste" is defined separately and distinctly from

ii. Section 103.7 of the Zoning Resolution is preempted by R.C. Chapter 6111 and R.C. 519.21.

32. The Township's absolute ban on industrial waste (including DWTM) is preempted leaving it with no regulation applicable to DWTM and Respondent without subject matter jurisdiction to grant the TRO or continue to a preliminary injunction hearing.

33. Revised Code Chapter 6111 specifically authorizes the OEPA to supervise "the disposal of . . . industrial wastes," including the means used for the collection, treatment, and disposal of such materials. R.C. 6111.46. Revised Code Chapter 6111 – the Chapter pursuant to which both the 2014 and 2017 LAMPs were issued – specifically defines the term "industrial waste" to include DWTM. *See* R.C. 6111.01(C). Ohio Adm. Code 3745-599-01(A)(2) permits beneficial use of DWTM from the treatment of a public water system's source water supply. Under the regulatory scheme, a beneficial use "may include but is not limited to use for agronomic benefit; as a replacement of a raw material; as a soil amendment, fertilizer, or structural fill; or as fill." Ohio Adm. Code 3745-599-02(B)(1). Relators' operation is specifically tailored to beneficial use of "industrial waste," in this case DWTM, as permitted under R.C. Chapter 6111 and Ohio Adm. Code 3745-599-02(B)(1).

34. Fundamentally, Section 103.7 of the Resolution explicitly prohibits beneficial use of DWTM after the State has already permitted it, the gravamen of preemption. *See Canton v. Whitman*, 44 Ohio St.2d 62, 337 N.E.2d 766 (1975) paragraph two of the syllabus ("regulations adopted under the powers of local self-government…must yield to [conflicting] general laws of statewide scope and application…"); *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E.

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industrial waste. Moreover, the Resolution's definition of conditionally permissible "waste disposal" does not include "industrial waste." This makes sense given the Township's complete ban of "industrial waste."

519 (1923) paragraph two of the syllabus (a conflict exists when "the ordinance permits or licenses that which the statute forbids and prohibits and vice versa").

35. The Sixth District Court of Appeals has previously held that local zoning regulations that conflict with the regulatory scheme established in R.C. Chapter 6111 be void and unenforceable. In *Perry v. Providence Township*, 63 Ohio App.3d 377, 578 N.E.2d 886 (6th Dist. 1991), Providence Township ought to enforce a remarkably similar zoning regulation, which stated:

> The dumping and/or spreading of sewage sludge, industrial sludge, and any by-product of the treatment of sewage or industrial waste is prohibited within the township.

In a declaratory action, a company who applied sludge to land, deposited sludge in landfills, and deposited sludge in land reclamation projects challenged the enforceability of Providence Township's zoning regulation. The court held the regulation was preempted by R.C. Chapter 6111 and an unauthorized exercise of power under the limited zoning grant bestowed on townships by R.C. 519.21. *Id.*

36. The Court explained:

> In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.
>
> The issue before this court is whether Section 7.13.1, which bans the land application of sludge in Providence Township, forbids or prohibits that which the state permits under R.C. 6111.46 and Ohio Adm. Code 3745-31-02(B). Appellants contend that neither the Revised Code section nor the Ohio Administrative Code section explicitly *permit* the land application of sludge, but that they merely *regulate* it in the event a political subdivision chooses to allow the land application of sludge at all. We do not read R.C. 6111.46 and Ohio Adm. Code 3745-31-02(B) so narrowly.
>
> R.C. 6111.46, through Ohio Adm. Code 3745-31-02(B), implicitly permits the land application of sludge so long as the Ohio Administrative Code requirements are met. Thus, Section 7.13.1,

> which totally bans the land application of sludge, forbids what the state permits and is therefore in direct conflict with state law.

Id. at 380 (emphasis original). *See also id.* at 381 ("A uniform statewide approach . . . is preferable to piecemeal local regulation."); *see also Osnaburg Twp. Zoning Inspector v. Eslich Envtl., Inc.*, 5th Dist. Stark No. 2008CA00026, 2008-Ohio-6671 (local zoning regulation which prohibited facility in a residential district preempted by R.C. Ch. 3714's "comprehensive schemes for regulating the disposal of construction and demolition debris, solid wastes and hazardous wastes").

37. Here, Section 103.7 of the Resolution prohibits that which R.C. Chapter 6111 permits. R.C. 6111.46 and Ohio Adm. Code 3745-599-01 *et seq*. "implicitly permits the [beneficial use of DWTM] so long as, the Ohio Administrative Code requirements are met." *Perry*, 63 Ohio App.3d at 380. The Resolution, on the other hand, prohibits the dumping, burying or spreading of DWTM anywhere in the Township. The Township's prohibition conflicts squarely with the OEPA's identified beneficial uses to which industrial waste may be put. Since the Township's Resolution is in direct conflict with the statute and regulations granting to the OEPA authority to permit the beneficial use of industrial wastes, it is preempted and unenforceable.[5]

[5] Similarly, the Township also relies on Section 103.8 of the Resolution, which prohibits "landfills" throughout the Township. RRD does not operate a "landfill"; hence, this provision does not apply. However, even if it did, such a township-wide prohibition on landfills is also preempted since statewide general law regulates the siting and operation of landfills. *See Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 442 N.E.2d 1278 (1982) (holding a local regulation which prohibited the existence of private landfills within the township to be preempted); *see also Harvard Refuse Inc. v. Cleveland*, 18 Ohio App.3d 80, 481 N.E.2d 656 (8th Dist. 1984) (Cleveland ordinances related to the review and licensing of solid waste facility were invalid in the face of the general uniform statutory scheme). Again, the Township cannot prohibit what the state permits.

VI. FIRST CLAIM FOR RELIEF
(EXPEDITED ALTERNATIVE WRIT AND WRIT OF PROHIBITION)

38. Relators incorporate by references paragraph 1 to 39 above as if fully rewritten herein.

39. "A writ of prohibition is an extraordinary remedy that is granted in limited circumstances with great caution and restraint." *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001). To be entitled to the requested writ of prohibition, Relators must demonstrate that (1) Respondent is about to exercise or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18; *State ex rel. Miller v. Warren Cty. Bd of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12.

40. However, the last requirement need not be established if the lack of jurisdiction is patent and unambiguous. *Chesapeake Exploration, L.L.C. v. Oil & Gas Comm.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11. The Court has found a patent and unambiguous lack of jurisdiction and has granted writs of prohibition in previous cases in which courts attempted to bypass the special statutory proceedings of agencies that have exclusive jurisdiction over a particular subject matter. *See e.g., State ex rel. Albright v. Delaware Cty. Court of Common Pleas*, 60 Ohio St.3d 40, 42, 572 N.E.2d 1387 (1991) (exclusive jurisdiction to consider annexation matters is in county in which hearing on annexation petition takes place); *State ex rel. Taft-O'Connor '98 v. Franklin Cty. Court of Common Pleas*, 83 Ohio St.3d 487, 488-489, 700 N.E.2d 1232 (1998) (complaints regarding election-law violations must be filed with the Ohio Elections Commission); *State ex rel. Wilkinson v. Reed*, 99 Ohio St.3d 106, 2003-Ohio-2506,

789 N.E.2d 203, ¶¶ 16, 18, 21 (unfair-labor-practices actions are the exclusive jurisdiction of the State Employment Relations Board).

41. Further, where a lower court's lack of jurisdiction is "patent and unambiguous," the Court will undo past acts by a trial court as well as prevent future ones. *State ex rel. Ohio Dept. of Mental Health v. Nadal*, 98 Ohio St.3d 405, 2003-Ohio-1632, 786 N.E.2d 49, ¶ 19 (citing *State ex rel. Sartini v. Yost*, 96 Ohio St. 3d 37, 2002-Ohio-3317, 770 N.E.2d 584, ¶ 24).

42. The point of establishing a statewide comprehensive scheme is to ensure that particular decisions are made *by* the administrative agency, which has subject-matter expertise. Undercutting the OEPA's authority through collateral judicial actions undermines the efficacy of the comprehensive issues. Respondent's unauthorized exercise of jurisdiction here brings this abstract principle into vivid focus. Rather than relying on the OEPA's expertise, Respondent's TRO does exactly the opposite.

43. Respondent's unauthorized exercise of jurisdiction also bypasses the administrative process. By issuing injunctive relief, the common pleas court made optional the administrative process that the General Assembly made mandatory. *See Taft-O'Connor*, 83 Ohio St.3d at 489. This, too, has practical consequences. Not only did Respondent act without the information and expertise that is at the OEPA's disposal, it also issued injunctive relief without the benefits of an administrative hearing, or the record such a hearing could provide.

44. Finally, bypassing the OEPA's administrative process creates more work for the judiciary. If *this* common pleas court judge may bypass that process, other common pleas judges may do the same in future cases. That would undoubtedly shift significant fact-finding and decision-making from government agencies to the judiciary, which, in turn, would tax judicial

resources. Most important, it improperly supplants the General Assembly's and the OEPA's policy decisions with a different view.

45. Relatedly, if *this* Township can obtain injunctive relief stopping a beneficial use project authorized by the OEPA, other townships may do so undermining the purpose of a statewide regularly scheme for such environmental programs.

46. Respondent has exercised judicial power over the Action in granting the TRO and is about to exercise its judicial power at the preliminary injunction hearing on March 7, 2017.

47. Respondent's exercise of judicial power is unauthorized by law.

48. Respondent is patently and unambiguously without jurisdiction.

49. Immediate relief is necessary to prevent Relators from being subjected to the TRO and any further injunctive relief from the preliminary injunction hearing on Tuesday, March 7, 2017.

VII. RELIEF REQUESTED

WHEREFORE, Relators pray that the Court grant an alternative writ prohibiting Respondent from further exercising jurisdiction over *Benton Township v. Rocky Ridge Development, LLC, et al.*, Ottawa C.P. Case No. 17 CV 064, including enforcement of the TRO, and a peremptory writ declaring the Respondent has no jurisdiction over the matter below. Relators also request such other relief as the Court deems just and proper.

Respectfully submitted,

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Attorneys for Relator Custom Ecology of Ohio, Inc. d/b/a Stansley Industries, Inc.

EXHIBIT A

IN THE
SUPREME COURT OF OHIO

STATE EX REL. ROCKY RIDGE DEVELOPMENT, LLC, *ET AL.*,	:	CASE NO.
Relators,	:	ORIGINAL ACTION FOR A WRIT OF PROHIBITION
vs.	:	
THE HON. BRUCE WINTERS,	:	
Respondent.	:	

AFFIDAVIT OF JOHN TADDONIO
Pursuant to S.Ct.Prac.R. 12.02

STATE OF OHIO)
)SS:
COUNTY OF LUCAS)

I, John Taddonio, being first duly sworn and cautioned, depose and state as follows:

1. I have personal knowledge regarding the matters set forth herein.

2. I am the Vice President of Relator Rocky Ridge Development, LLC.

3. I have reviewed the Complaint for Expedited Alternative Writ and Writ of Prohibition and affirm that the facts set forth therein are true and accurate based on my personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.

John Taddonio

Sworn to before me and subscribed ~~in my presence~~ on this 5th day of March, 2017.

Notary Public

MATTHEW D. HARPER
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

3918577.1

EXHIBIT B

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP 1670 NORTH WALKER ST. P.O. BOX 7 GRAYTOWN, OHIO 43432 Plaintiff, v. ROCKY RIDGE DEVELOPMENT, LLC 3017 N. STATE ROUTE 590 GRAYTOWN , OHIO 43432 C/O E&S REGISTERED AGENT, LLC 100 EAST BRAOD ST., SUITE 2100 COLUMBUS, OHIO 43215 and STANSLEY INDUSTRIES, INC. 3793 SILICA RD. SYLVANIA, OHIO 43560 C/O CUSTOM ECOLOGY OF OHIO, INC 6735 DISCOVERY BLVD MABLETON, GEORGIA 30126 Defendant.	CASE NO. JUDGE **VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

For its verified Complaint against the Defendant, Rocky Ridge Development, LLC ("defendant or Rocky Ridge"), Plaintiff, Benton Township ("plaintiff or Township") alleges and avers as follows:

THE PARTIES

1. Plaintiff is an Ohio Township located in Ottawa County, Ohio with all the powers expressly conferred upon it by Ohio law and Ohio Revised Code Chapter 519.

2. Defendant Rocky Ridge is an Ohio Limited Liability Company with its principle place of business on State Route 590 in Ottawa County, Ohio and, it is performing work as set out below at and around the closed StoneCo quarry in Benton Township, Ottawa County, Ohio.

3. Defendant Stansley Industries, Inc. is an Ohio Company with its principal place of business located at 3793 Silica Road, Sylvania, Ohio and is performing work as set out below at and around the closed StoneCo quarry owned and operated by Rocky Ridge Development, LLC in Benton Township, Ottawa County, Ohio.

BACKGROUND

4. This lawsuit arises out of the defendant's unlawful application of industrial waste at the closed StoneCo quarry property and the surrounding property contiguous to the quarry property. The defendant is operating the land as a disposal site for waste being relocated from the City of Toledo water treatment plant, including the treatment plant lagoons. Further, the defendant intends to utilize the closed quarry, which is now a lake, and the surrounding property to mix the water treatment waste with soil and fill the quarry.

5. The City of Toledo owns and operates the Collins Park Water Treatment Plant ("Collins Park") which provides drinking water to Toledo and some surrounding areas. It draws water from Lake Erie via a pump station in Jerusalem Township in Lucas County.

6. The treated water supply at Collins Park became contaminated with algal toxins in the summer of 2014. To remedy this problem, in the near term, Toledo proposed and, OEPA approved, the installation of additional activated carbon treatment and potassium permanganate

feed systems at the pump station. Toledo also received approval for carbon feed systems at Collins Park which entails the installation of two 70-foot-high chemical storage silos with controls and piping to the north side of the Collins Park. As part of these approvals, OEPA concluded that no supplemental Environmental Study was needed to implement the recommendations. However, there was no evaluation of the disposition of the spent lime industrial waste or the waste to be removed from the lagoons and relocated as part of this project and thus, the disposal of this waste as part of the project was never part of the evaluation that concluded that no supplemental environmental study was necessary.

7. The Ohio EPA issued a Land Application Management Plan ("LAMP") to defendant Stansley Industries, Inc. on November 13,2014. The permit was to permit the beneficial reuse of lime residuals in a soil blend as general fill. The stated beneficial use was to "make grade at the property and create vegetative growth". Even if this was a beneficial use under Ohio law, which plaintiff denies and objects to, the permit specifically prohibits creation of a nuisance and the defendant is not permitted to place waste in waters of the State. Moreover, it does not allow the defendants to violate local zoning resolutions. Finally, the LAMP was issued to an entity that did not own or operate the property where the waste was being disposed, the closed StoneCo quarry property and the contiguously zoned agricultural property.

8. On September 16, 2016 Toledo passed Ordinance 331-16 authorizing the expenditure for the removal and disposal of spent lime residuals in "Lagoon E and embankment relocation of the residuals." On January 16, 2016 Toledo also passed Ordinance 7-16 authorizing the expenditure for the removal, hauling and beneficial reuse of the spent lime produced by the water treatment.

9. Toledo then contracted with Custom Ecology of Ohio, Inc. for spent lime "removal and disposal" pursuant to Ordinances 331-16 and 7-16. The contract authorizes payment of over $ 8.5 million for the removal and disposal of the sludge waste.

10. Custom Ecology of Ohio, Inc. ("Custom Ecology") is an Ohio Corporation apparently owned by the same individuals that own the defendant, Stansley Industries, Inc. and Rocky Ridge, and is located at the same principal address as Stansley, 3793 Silica Rd., Sylvania, Ohio.

11. As indicated above, for some reason the LAMP issued by the Ohio EPA was issued to Stansley Industries, Inc., the only company of the three companies owned by the Stansley brother shareholders that does not own, operate or haul the waste sludge at issue.

12. An alternative disposal method is required under the contract between Toledo and Custom Ecology, thus Toledo has an alternative to dispose of the waste other than the property at issue in Benton Township.

13. Toledo has the authority and right to terminate the contract it has signed with Custom Ecology if the contractor disregards any rules and regulations of any regulatory authority who has jurisdiction.

14. On February 14, 2017, the Ohio EPA apparently recognized its mistake and issued a modified LAMP, this time making Rocky Ridge the owner and operator of the Benton Township property subject to the LAMP. The beneficial use described is now described as "to increase the elevation and improve drainage in existing low lying areas." Not only are these reasons not true with respect to what the defendants are doing at the property, but they are subject to the local Zoning Resolution of Benton Township, which is being blatantly ignored.

15. There are 25 Benton Township residences within 2000 feet of the closed quarry's excavation, 5 residences are 200 feet from the property line and 25 of these residences have private drinking water wells drilled to 15 to 25 feet below the ground surface, sharing the same aquifer as the quarry the defendant intends to drain and fill with industrial waste.

16. In addition to disregarding the Benton Township Zoning Resolution, the defendants are creating and, continue to create a nuisance, endangering the groundwater quality and quantity, causing flooding and erosion and endangering the safety and health of Benton Township residents.

17. Defendant Rocky Ridge is excavating the land to bedrock, ignoring the putative beneficial use and the Ohio law prohibiting the placement of waste in waters of the state and filling the industrial waste directly onto bedrock. Further, the waste, on at least 4 occasions, and upon information and belief many more times, has not been mixed properly. This practice has threatened and continues to threaten residential drinking water, the aquifer and the safety of the Township residents.

18. Moreover, at times, industrial waste has spilled and continues to spill on the roadways around the defendant's property creating a slippery and hazardous road surface. When it is dry, it creates unnecessary dust and spreads onto residential property and cars utilizing the township roads. It also creates storm water control issues.

BENTON TOWNSHIP ZONING AND THE STONECO QUARRY PROPERTY

19. In 1964 Benton Township residents approved a proposed zoning plan for the Township in a general election. This election and approval of the zoning code was consistent with the law provided by the Ohio Rev. Code Chapter 519.

20. In 1964 a portion of what is now the closed Quarry was zoned "M-3 Manufacturing." Mineral extraction and storage is only permitted in M-3 and the zoning code refers to "mineral extraction and storage" under the definition of quarrying.

21. In 1988, StoneCo. Applied to rezone a portion of their property (33.3779 acres) from "A-3 Agricultural" to M-1 Manufacturing. The proposal was subsequently amended to M-3 Manufacturing.

22. A public hearing was held on February 18,1988 and StoneCo. stated that it had outgrown its present site and sought to expand. After some discussion, to provide a buffer for the residences close to the quarry property, the request was amended to only include 25 acres. The Benton Township Trustees voted to rezone 25 acres per the request. Thus, a section of the StoneCo. property, the same property where the defendant is currently operating remained zoned as "A-3 Agricultural." The defendants are unlawfully operating on this property without zoning approval.

23. The StoneCo. quarry ceased operation in 2004 and the property was not purchased by the defendant until December 17, 2014. Upon closure, the conditional use of the StoneCo property ceased after two (2) years. Moreover, to utilize any property zoned M-3 Manufacturing for waste disposal, a conditional use, it must be approved by the Board of Zoning. The defendants have failed to even apply for the approval necessary.

24. Removal of topsoil from a parcel of property zoned A-3 Agricultural is a conditional use that must also be approved by the Board of Zoning. Rocky Ridge has removed soil without seeking any approval from the Board of Zoning. The defendants have failed to even apply for approval.

25. The Benton Township Zoning Resolution requires a farm pond to be subject to section 706 of the Zoning Resolution and requires a Zoning Certificate. Removal of topsoil from a A-3 Agricultural area is a conditional use requiring approval from the Board of Zoning. The defendants have dug a borrow pit and have removed soil, transferred it to other property and mixed it with waste. They do not have approval for these actions and further, have not complied with section 706 of the Benton County Zoning Resolution.

26. In 1987 Article 1, Section 103.7 of the Zoning resolution for Benton Township was amended to state: "The dumping and/or burying and/or spreading, in any manner, of sewage and /or sewer sludge and /or industrial waste is fully prohibited in all eleven (11) zoning classifications listed..." (subsequently amended to include 13 classifications when an additional 2 classifications were added).

27. The Toledo water treatment plant waste is the result of a process whereby the treatment plant treats its water, among other things, with lime to remove impurities. The sludge is typically classified as a solid waste by the Ohio Environmental Protection Agency. Upon information and belief, the waste in the lagoons was buried as far back as 1954 so it is likely not uniform in its chemical make-up, may contain dredging's from the river or lake and/or hazardous substances as well. Regardless, unless exempted, it is industrial solid waste under Ohio law.

28. In 1990, the Benton Township Trustees adopted another Amendment at Section 103.8 of the Benton Township Zoning Resolution and it states: "Landfills for solid waste disposal or for any other waste material shall be fully prohibited in all 13 zoning classifications."

29. The zoning code defines waste disposal as "the disposition of garbage, combustible and noncombustible waste material."

30. The defendants are spreading and disposing of industrial waste in Benton Township in violation of the Benton Township Zoning Resolution.

31. Benton Township has the right, power and authority to enforce local zoning to protect the safety and health of its citizens.

32. On July 22,2016, the defendant Rocky Ridge applied to the OEPA for authorization for an Integrated Alternative Waste Management Plan ("IAWMP"). The plan was submitted to allow the disposal of the waste currently in lagoons at the Toledo Collins Park Treatment Plant into the closed StoneCo. quarry in Benton Township. It has not been approved and the citizens surrounding the quarry property have challenged and will continue to challenge the IAWMP application.

33. The application is necessary to provide an alternative to the method required to dispose of this type of waste under Ohio Administrative Code 3745-27-05(A)(4). It also is necessary to receive an exemption under Ohio Rev. Code Section 3734.02(G) from certain solid waste requirements. In short, this process allows the defendant to avoid many landfill requirements meant to protect the environment and human health and safety including but not limited to the requirement for a background check for the individuals owning and operating the solid waste disposal facility, a liner, cap requirements and, financial assurance to make sure the landfill is closed and monitored and maintained during post closure, a 30-year requirement under Ohio law.

34. Ohio EPA found the application to be "incomplete and inadequate" as submitted. Thus, it responded with 14 pages of comments and questions related to the defendant's plan.

35. One of the comments Ohio EPA made identified the lack of soil necessary to mix the waste with per the plan submitted. (the plan calls for mixing waste with soil at a ratio of 2/3 soil to 1/3 waste). Specifically, the plan calls for offsite borrow sources without identifying them.

36. On or around January 31, 2017 the defendant, without first obtaining a zoning certificate authorizing the activity, started to dig a borrow pit on the property contiguous to residential property. When Benton Township complained that they did not have authorization to dig the pit, they applied for a Zoning Certificate to dig a "farm pond." Despite not being approved and being advised of multiple concerns by the Ottawa County Engineer, the defendants have continued to dig this borrow pit and move topsoil from A-3 Agricultural zoning to what they believe to be M-3 Manufacturing zoning.

37. The Ottawa County Engineer advised the defendant, among other things, that, "The displacement of excavated material from this pond was discussed during permit review with Benton Township and Rocky Ridge Development. It was discovered that the spoil would be placed on a parcel of ground that may create a zoning violation. This office asks that this issue be addressed and cleared up prior to construction." It was not, and the defendants ignored the requirement(s) and are in violation of local zoning laws.

38. The Ottawa County Engineer stated that Rocky Ridge Development would need to acquire appropriate permits from ODNR, Ohio EPA and any other regulatory agency prior to construction.

39. Additionally, Ottawa County Engineer also, stated to the defendant that he was very concerned with the size of the pond and its design since it created the potential for flooding over its embankments as well as the flooding of Lipstraw Ditch, the ditch the pond is proposed to

overflow into, an area that already experiences flooding issues. It also has raised erosion concerns.

40. The defendant's mixing operation and the digging of the borrow pit have ignored storm water considerations and have caused erosion and flooding of at least one residential property.

41. Despite the failure to get zoning approval, the failure to seek zoning approval to spread and dispose of the waste at issue, and the lack of compliance with multiple local zoning requirements as set forth above, the defendant continues to relocate thousands of tons of the waste to Benton Township.

COUNT I

42. Plaintiff incorporates by reference paragraphs 1 through 41 of the Complaint as though fully restated in this Count.

43. Through its acts and/or omissions, defendant has caused and/or permitted, and continues to cause and/or permit, the improper removal and transfer of soil, the contamination of topsoil, subsoil, surface and groundwater in and around Benton Township. The defendants conduct also endangers the quality and quantity of the drinking water being supplied to nearby residents. Moreover, State law does not permit contaminants to be placed into waters of the state, including groundwater. S*ee ORC Section 6111.04.* The defendants conduct poses a continuing threat to human health, the environment and the safety of Benton Township residents. Further, the activities of the defendant as well as its stated intentions endanger the safety of the Benton Township residents and its conduct has adversely impacted the use and enjoyment of the residential property contiguous to the waste disposal site.

44. The acts and/or omissions of the defendant have in the past, and continue in the present, to contribute to the deterioration of the quantity and quality of the aquifer, create erosion and flooding and violate zoning restrictions specifically put into place to protect the health and safety of the Township's residents. These acts and/or omissions violate zoning laws meant to protect safety and constitute a nuisance under Ohio law, including but not limited to, the local zoning resolution at 800.1[1], the Ohio Revised Code and the common law.

45. Further, to the extent that the defendants have unreasonably interfered with the use and enjoyment of the aquifer, caused flooding or erosion, violated environmental laws meant to protect safety, human health and the environment or zoning regulations meant to protect the safety of Benton Township residents, its acts and/or omissions constitute an absolute nuisance or nuisance *per se* for which it stands strictly liable.

46. The Benton Township Zoning Resolution "is adopted for the purpose of protecting and promoting public health, safety, morals comfort and general welfare; conserving and protecting property and facilitating adequate and economical provisions of public improvements...." *Article I, Section 101 Benton Township Zoning Resolution.*

47. In addition to violating statutory restrictions passed specifically to protect safety and human health and the environment, the actions of the Defendant have also caused and continue to cause irreparable harm and damage.

COUNT II

48. Plaintiff incorporates by reference paragraphs 1 thorough 47 of the Complaint as if fully set forth in this Count.

[1] Section 800.1, states in pertinent part, "No land or building in any district shall be used or occupied in any manner so as to create any dangerous, injurious, noxious or otherwise objectionable element or condition so as to adversely affect the surrounding area ...."

49. The defendant has not obtained a valid Zoning Certificates for the use of the closed StoneCo. quarry and the vacant land surrounding the closed quarry. Moreover, it has violated the Benton Township Zoning Resolution in all the ways indicated in this Verified Complaint.

50. Further, the defendant is digging a borrow pit for purposes of obtaining soil to mix with waste under the guise of creating a pond. The defendant is without proper approvals and authorization, endangering nearby residential and Benton Township property with flooding and erosion damage and has not received authority from the Ohio Department of Natural Resources ("ODNR"), the Army Corp of Engineers, and/or Benton Township to dig this borrow pit.

51. The defendant is in violation of Ohio Revised Code Section 519.23 and Section 1000,1001,1101,1102, 1103,706, 800 of the Benton Township Zoning Resolution.

52. Ohio Revised Code Section 519.24 and Benton Township Zoning Resolution Section 1007.2 authorize Benton Township to seek an injunction to enjoin, abate and remove the violation and damage caused by the violation.

53. This court also has inherent authority under common law and under the Ohio Civil Rules of Procedure to enjoin or grant any further injunctive relief that may be required to prevent, abate and enjoin actions that endanger human health, safety and the environment and/or cause a nuisance.

54. Unless the defendant is enjoined by this Court, Benton Township and its citizens would suffer serious and irreparable harm, including but not limited to flooding, erosion and impacts to their drinking water quality and volume, and the violation of legislative requirements

passed into law to protect the safety of the public and specifically, in this instance Benton Township residents.

55. Under Ohio law, statutory provisions such as those in this instance, when breached, are presumed to create irreparable harm supporting the granting of an injunction.

COUNT III

56. Plaintiff incorporates by reference paragraphs 1 thorough 55 of the Complaint as if fully set forth in this Count.

57. Ohio Rev. Code Section 2721.03 authorizes this Court to issue declaratory relief to construe the rights, duties and obligations of parties under a statute or regulation.

58. Disputes have arisen over the defendant's right to spread waste from the Collins Park water treatment plant under the Benton Township Zoning Code and specifically over whether Ohio EPA can exempt activity meant to protect health and safety under Ohio law without regard to local zoning regulations passed to protect safety.

59. Plaintiff also respectfully seeks a declaration that the Defendants must comply with the Benton Township Zoning Resolution, including the exhaustion of any administrative remedies mandated.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the court grant the following relief:

A. Issue a Temporary, Preliminary and Permanent injunction to enjoin the defendant from continuing to accept waste for mixing, spreading and/or disposal in Benton Township until and unless all zoning requirements are complied with;

B. Issue an injunction requiring the defendant to abate and remove waste placed upon property in Benton Township and to restore the property where removed to its original condition;

C. Issue a Temporary, Preliminary and Permanent injunction requiring the defendant to cease digging a borrow pit for ultimate use as a putative farm pond and to cease mixing soil with waste without obtaining all proper approvals;

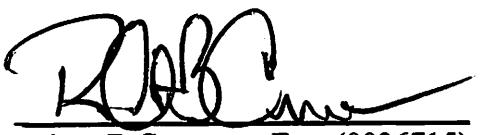
D. Issue a declaration that the defendant must comply with the Benton Township Zoning Resolution prior to performing any further work on this project on its property;

E. Issue a declaration that the zoning prohibitions against spreading sludge or industrial waste is valid, enforceable and applicable to the defendants conduct in this case;

F. Such other relief that this court deems just and fair in law or equity;

G. An order awarding attorney fees and costs of this lawsuit in favor of Benton Township;

Respectfully Submitted,



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Attorney for Plaintiff Benton Township

EXHIBIT C

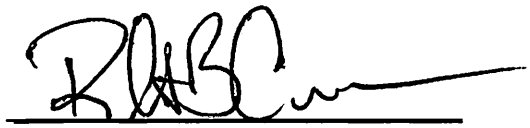
IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP Plaintiff, v. ROCKY RIDGE DEVELOPMENT, LLC et. al Defendant.	)	CASE NO. JUDGE **MOTION FOR TEMORARY AND PRELIMINARY INJUNCTIVE RELIEF**

Plaintiff, Benton Township, by and through undersigned counsel, respectfully moves this Honorable Court to issue a Temporary and Preliminary Injunction to enjoin the defendants, Rocky Ridge Development, LLC ("Rocky Ridge") and Stansley Industries, Inc. ("Stansley"), as well as any affiliated company with the defendants, to comply with the Benton Township Zoning Resolution and from continuing to accept and spread industrial waste in Benton Township in violation of the Benton County Zoning Resolution and Ohio law until and unless they are in full compliance with the Zoning Resolution and Ohio law. Defendants' conduct has and, continues to endanger, the health and safety, comfort and convenience and property of the residents of Benton Township.

The reasons for this Motion are more fully set forth in the attached Brief in Support incorporated as if restated in this Motion.

Respectfully Submitted,



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IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP Plaintiff, v. ROCKY RIDGE DEVELOPMENT, LLC et. al Defendant.	)	CASE NO. JUDGE **BRIEF IN SUPPORT OF MOTION FOR TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF**

I. INTRODUCTION

Benton Township ("Township or Plaintiff") has filed a Motion seeking an injunction and declaratory judgement against the defendants, Rocky Ridge Development, LLC ("Rocky Ridge") and Stansley Industries, Inc. ("Stansley") (collectively "the defendants"). The plaintiff seeks an order enjoining the defendants from violating the Benton Township Zoning Resolution and endangering the safety of the Benton Township residents.

The conduct at issue arises from defendant's intention is to utilize the closed StoneCo quarry property, and the contiguous agricultural property, to mix soil with waste relocated from the Toledo water treatment plant in Lucas County and ultimately, to fill the closed quarry. The relocation of 100's of thousands of tons of waste from Lucas to Ottawa County is expected to take 10 years. As part of this plan to fill the quarry with the industrial waste, the defendants not

only have to drain the quarry that has been a lake for years, but they also need a large amount of soil to mix with the waste. Thus, they are also digging a large borrow pit at the location to supply soil for mixing. The defendants' intention is to fill the borrow pit once it is dug, with water forming a lake or a large pond. (They are eliminating one lake by filling it with waste mixed with soil and creating another lake). The defendants have already brought thousands of tons of waste to Benton Township pursuant to this plan and have in the process violated multiple provisions of the Benton Township Zoning Resolution. As set forth below, the defendants are violating the Benton Township Zoning Resolution endangering the safety of the Benton Township residents and ignoring the land use requirements of the local law.

II. STATEMENT OF FACTS

A. The Placement of Industrial Waste in Benton Township at the Closed StoneCo Quarry Property and the Defendants Plan to Drain the Quarry and Fill It with Industrial Waste Mixed with Soil.

In the summer of 2014, the City of Toledo had a problem. It's Collins Park Treatment Water Treatment Plant became contaminated with "algal blooms." In the process of seeking a solution, it became clear that the lagoons where it had disposed of waste created during the treatment process could no longer be buried in lagoons on site and that waste already disposed of had to be relocated to implement the solution Toledo proposed. In short, Toledo needed a place to dispose of and relocate its industrial waste.

On January 16, 2017 Toledo passed Ordinance #7-16 authorizing the expenditure for the removal, hauling and beneficial reuse of the lime waste produced at the Collins Treatment Plant. Nine months later, on September 16,2017, it passed ordinance #331-16 authorizing the expenditure for the removal of spent lime residuals in lagoon E and embankment relocation of

"residuals". This contract essentially authorizes the removal and relocation of buried waste, after apparently recharacterizing it years after it was disposed.

Toledo contracted with Custom Ecology of Ohio, Inc. ("Custom Ecology") for spent lime removal and disposal pursuant to the two ordinances cited above. The authorized contractual amounts exceed $8.5 million. Custom Ecology is also owned or affiliated with the defendants and has at least one address that is the same address as the defendants in Sylvania, Ohio.

The lime waste created from the treatment process is considered a solid waste under Ohio law and thus placement of it onto or into any land surface would be subject to regulation under Ohio Rev. Code Section 3734 *et. seq*. However, in 2014, Defendant Stansley applied for and received a permit with Ohio EPA to beneficially reuse the lime waste to "increase elevation and promote surface drainage" on the quarry property in Benton Township[1] ("beneficial reuse permit"). This permit does not permit the placement of waste from the water plant or any other source into the closed StoneCo quarry. Defendant Rocky Ridge, a company owned by the same shareholders as defendant Stansley Industries, purchased the closed StoneCo quarry in 2014.

The beneficial reuse permit is referred to as "Short Term Approval Beneficial Reuse" and is dated November 13, 2014. It has multiple conditions and among them, the authorization states that "storage and land application of lime residuals shall not create a nuisance and shall not effect public safety or health or the environment..." The prohibition goes on to state that Ohio EPA may revoke the permission granted under such circumstances and Stansley shall cease land application. Stansley is also prohibited from placing the waste into "waters of the state", which includes groundwater.

[1] The beneficial use cited in Ohio EPA documents is tenuous and appears to disregard its own policy related to what constitutes a beneficial reuse. The Ohio EPA Division of Solid Waste Management did acknowledge that "this was different than typical farm filed application". Increased elevation as a beneficial reuse is not identified in Ohio EPA policy or regulations recently passed and that become effective in March,2017.

On February 14, 2017, a modified Beneficial Use Permit was issued, this time including defendant Rocky Ridge, the property owner and operator. This was after months of failing to regulate the proper corporate entity mixing the waste on the Benton Township located property. The beneficial use cited as the authorization continues to be to "improve drainage in existing low lying areas." Not only is the waste not being used for this purpose since the defendants are digging down to bedrock to place the waste, but such a beneficial use is not permitted under Ohio law. Accordingly, the approval will be challenged by an appeal to the Environmental Review Appeals Commission ("ERAC").

In addition, on July 22, 2016 defendant, Rocky Ridge applied to Ohio EPA for authorization to fill the closed StoneCo quarry with the waste from the Toledo Collins Park water treatment plant lagoons. The permit sought is referred to as an Integrated Alternative Waste Management Plan ("IAWMP"). Ohio EPA reviewed the application and found the application to be "incomplete and inadequate," responding with 14 pages of single spaced comments and questions related to the plan. Despite Benton Township's strong interest in the issues, Ohio EPA has refused to allow any participation in the discussions taking place regarding this permit.

One of Ohio EPA's concerns identified a lack of soil necessary to mix the waste with per the plan submitted (generally the application calls for 2 to 1 mixture of soil to waste). Thus, the defendants started and continue to dig a borrow pit on the property adjacent to the quarry. When Benton Township complained that they did not have authorization to dig the pit, the defendant applied for a permit to dig a putative farm pond but, it has not been granted approval.

The Ottawa County Engineer advised the defendants of several concerns related to the defendant's plan to dig what amounts to a lake on the property. Included in the concerns was an

advisory that the placement of the spoil may create a zoning violation. The Ottawa County Engineer also stated that he was "very concerned with the size of the pond and its design since it created the potential for flooding over its embankments as well as flooding of the Lipstraw ditch, the ditch the pond is supposed to overflow into, an area that already experiences flooding." Benton Township has the authority and obligation to review these issues for the safety of its residents under the Zoning Resolution.

Significantly, there are 25 Benton Township residences within 2000 feet of the closed quarry's excavation, 5 residences are 200 feet from the property line and all 25 residences have private drinking water wells 15 to 25 feet below the ground surface and these wells share the same aquifer as the closed quarry (which is now filled with water) that the defendants intend to drain and fill with waste relocated from the Toledo water plant. Moreover, the residents believe that defendants have already violated of the setback requirements set forth in the modified beneficial use authority issued by Ohio EPA on February 14, 2017.

B. <u>The Benton Township Zoning Resolution.</u>

In 1964 Benton Township residents approved a zoning plan for the Township in a general election. This approval and process was and is consistent with the statutory authority granted by Ohio Revised Code Section 519 *et seq.*

The StoneCo quarry ceased operation in 2004 and sold the property to defendant Rocky Ridge in 2014. Since 1964, a portion of the closed quarry has been zoned "M-3 Manufacturing." Under the Zoning Resolution, mineral extraction and storage is only permitted in areas zoned M-3. "Quarrying" is defined as "mineral extraction and storage under the zoning code.

In 1988, StoneCo sought to expand and applied to rezone a portion of the property at issue in the current dispute from "A-3 Agricultural" to "M-1 Manufacturing." The proposal was

subsequently amended to seek "M-3 Manufacturing" zoning. A public hearing was held on February 18,1988. After some discussion, it was decided by those involved that a buffer was needed for the residences close to the quarry property so the request was amended to rezone 25 acres rather than the 33.3779 acres originally sought. Thus, a section of the StoneCo property, a portion of the property where the defendants are now storing, mixing, spreading and/or disposing of waste is zoned "A-3 Agriculture." To utilize the M-3 or A-3 property for "waste disposal" (defined to be the final disposition of waste) requires Zoning Board approval. The M-3 property makes "waste disposal" a conditional use requiring Zoning Board approval. The activity is a non-conforming use and requires a variance on the A-3 property.

Removal of topsoil from a parcel of property zoned A-3 Agricultural is a conditional use that must be approved by the Board of Zoning. The defendants have not even applied for such approval.

In 1987, Article I, Section 103.7 of the Zoning resolution was amended to state: "The dumping and/or burying and/or spreading, in any manner, of sewage and/or sewage sludge and /or industrial waste is fully prohibited in all 11 zoning classifications listed..." Subsequently two additional classifications were added to the zoning resolution and the amendment was amended to include all 13 classifications.

In 1990, the Benton Township trustees adopted another amendment at Section 103.8 of the Benton Township Zoning resolution and it states: "landfills for solid waste disposal or for any other waste material shall be fully prohibited under all 13 zoning classifications."

As stated above, for the defendants to mix the industrial waste with soil at a ratio of two to one, the defendants need for a borrow pit. Thus, the defendants have started to dig this pit under the guise of it being "a farm pond." To do this they need a Zoning Certificate for this purpose

and they do not have one, having only recently submitted a complete application. Moreover, as indicated above, the defendants are not permitted to remove soil from the designated use of A-3 Agricultural and relocate it to property designated M-3 Manufacturing. They are currently doing this without a Zoning Certificate or variance in accordance with the Benton Township Zoning Resolution.

III. LAW AND ARGUMENT

A. The Standard for Statutory Injunctions in Ohio.

The purpose of a preliminary injunction is to preserve the status quo of the parties pending a decision on the merits. *Davis v. Widman, (2009 3rd Dist.) 184 Ohio App. 3d 705 922 N.E.2d 272, para. 29.* Generally, under Ohio law, the court must consider and balance the equities using a four - part test in determining whether to issue temporary or preliminary injunctive relief: *Danis Clarkco Landfill Co. v. Clark Cty Solid Waste Mgmt Dist. (1995) 73 Ohio St.3d 590; Vanguard transportation Systems, Inc. v. Edwards Transfer & Storage Co. (Franklin App. 1996) 109 Ohio App. 3d 786,790.* However, this balancing of equities is not followed when a statutory injunction is sought, as in this case. The Ohio Supreme Court has stated:

> It is established law in Ohio that, when a statute grants a specific injunctive remedy, to an individual or to the state, the party requesting the injunction need not aver and show, as under ordinary rules of equity, that great or irreparable injury is about to be done for which he has no adequate remedy at law.

Ackerman v. Tri-City Geriatric & Health Care, Inc. 55 Ohio St. 2d 51,56 378 N.E.2d 145 (1978) accord, State ex rel. Dann v. R & J Partnership, Ltd, 2nd Dist. Montgomery No. 22162, 2007 WL 4615956, para. 21 (when a statute grants a specific statutory remedy, the traditional concepts for issuance of equitable injunctions do not apply). In the case of a statutory injunction, the moving party need only satisfy the statutory conditions. *Id.* It is inappropriate to balance the

equities or require the state to do equity in a statutory injunctive action since the authorization of a government agent to enjoin harmful activities is not designed to ensure justice for the parties, but to protect the public. *State ex rel. Pizza v. Rezcallah, 84 Ohio St. 3d 116,702 N.E.2d 81 (1998) (applying Ackerman holding, that statutory injunction should issue if the statutory requirements are fulfilled, to a nuisance abatement case).*

The rationale distinguishing statutory injunctions from equitable injunctions is that the statutory body has already determined that the prohibited conduct is not in the public interest and thus it would be redundant to have to prove irreparable harm and the lack of an adequate legal remedy once it is proved that the conditions which the statutory authority proscribed exist. *See Ackerman, 55 Ohio St. 2d at 57-58, 378 N.E.2d 145.*

Since Ohio Revised Code Section 519.24 grants a specific remedy for zoning violations, the requesting party need not establish an irreparable injury or lack of an adequate remedy at law if the basis of the injunction sought is a violation of zoning. *See e.g. Baker v. Bevins,162 Ohio App. 3d 258, 2005 Ohio 3664 (2nd App. Dist. 2005); Union Twp Bd. Of Trustees v., Old 74 Corp. (12th App. Dist. 2000) 137 Ohio App. 3d 289,294; Ameigh v. Baycliffs Corp. (1998) 127 Ohio App. 3d 254,260; Miller v. Byler, March 11,1991) 5th Dist. No. CA-8262, citing Ackerman; Kroeger v. Std. Oil Co. of Ohio, Inc. (August 7, 1995) 12th Dist. No. CA88-11-086; Fiore v. Larger, (2nd Dist. 2009) 2009 Ohio 5408; Board of Sufffield Township Trustees v. Rufener (11th App. Dist. 2011) 2011 Ohio 3294: Township of Brimfield v. Fioritto, (11th App. Dist. 2014) No. 2014-P-0019, 2014 Ohio 4743.*

In an action for a temporary or preliminary injunction, the burden of proof required does not have consensus among Ohio courts. *DeWine v. 333 Joseph, LLC, 21 N.E.3d 1142 (3rd Dist. C.A. Nov. 17,2014).* Ohio courts have in some instances applied a preponderance of

evidence standard when dealing with a statutory injunction, such as in the current case. *Id. at p. 1148.* Still, other courts have not seen a reason to distinguish between statutory and equitable injunctions based upon common law when it comes to the burden of proof and thus a apply a "clear and convincing" burden upon the plaintiffs[2]. *Id. at p.1149*; *Younker v. Nationwide Mut. Ins. Co. (1961) 176 N.E.2d 465.*

Regardless of the burden, the defendants have clearly violated the legislative provisions cited. That said, however, plaintiff believes that a "preponderance of evidence" standard is warranted because the safety of the residents is directly at issue in this lawsuit. Moreover, since permanent injunction is something that is ordered after a hearing on the merits has been held, the lower standard is justified for a temporary and preliminary injunction. *Sovereign Chem. v. Condren (9th Dist. C.A. Apr. 22,1998) Summi No. 18285, 1998 WL 195876, fn 2.*

B. <u>The Plaintiffs have Clear Statutory and Regulatory Injunctive Authority to Enjoin the Defendants Conduct.</u>

Ohio Rev. Code Section 519.24 reads ,in relevant part, "in case... any land is or is proposed to be used in violation of section 519.01 to 519.99, inclusive, of the revised Code , or of any regulation or provision adopted by any board of township trustees under such sections, such board ,the prosecuting attorney of the county... or any adjacent or neighboring property owner who would be especially damaged by such violation ...may institute injunction... abatement, or any other appropriate action or proceeding to prevent, enjoin, abate or remove such unlawful ...use."

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[2] Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not top the extent of such certain as is required beyond a reasonable doubt in criminal cases. It does not mean clear and unequivocal. *Cross v. Ledford (1954) 161 Ohio St 469, 477 120 N.E. 2d 118.*

In addition, Section 519.02 grants township trustees the authority to regulate building and land use within the township "for the purpose of promoting the public health, safety and morals." Consistent with this statutory authority, the Benton Township Trustees enacted its zoning resolution which includes at Section 1107.2 and the right to an injunction remedy and an anti-nuisance provision at section 800.1

Benton Township Zoning Resolution Section 1107.2 reads, in pertinent part, "In case...any land is or is proposed to be used in violation of this resolution...the zoning inspector, Township Solicitor ... in addition to any other remedies provided by law, may institute injunction, mandamus, abatement or other appropriate action or actions proceeding or proceedings to prevent enjoin, abate or remove such unlawful ...change, maintenance or use."

Section 800.1 of the zoning resolution reads, in pertinent part, "No land or building in any district shall be used or occupied in any manner so as to create any dangerous ,injurious, noxious or otherwise objectionable element or condition so as to adversely affect the surrounding area or adjoining premises provided that any use permitted by this Resolution may be undertaken and maintained if acceptable measures and safeguards are employed to limit dangerous and objectionable elements to acceptable limits as established by the Federal Government or appropriate State statutes as amended.

The Ohio Supreme Court has recognized that the Ohio Environmental laws do not abridge rights of action or remedies in equity, under common law, or as provided by statute or prevent the state or any municipal corporation or person in the exercise of their rights in equity, under common law, or as provided by statute to suppress nuisances or to abate or prevent pollution. *See Atwater Township Trustees et al. v BFI Willowcreek Landfill, (1993) 67 Ohio St. 3d 293 (with*

respect to ORC Chapter 3734). "Person" includes a political subdivision and a township is a political subdivision in Ohio under Ohio Rev. Code Section 503.01.

Thus, the Plaintiff has the right to enjoin the defendants' activities because they have violated Benton Township Zoning laws as set forth below and, on top of ignoring the zoning laws, have created a nuisance.

C. **The Defendants Have Violated Multiple Provisions of The Zoning Resolution.**

The defendants have violated the Benton Township Zoning resolution in several distinct ways. The first three involve the defendant's failure to get Zoning Board approval where required by the Zoning Resolution. The defendants have removed topsoil from a parcel of property designated A-3, Agriculture and that is a conditional use that must be approved by the Board of Zoning. They have not applied for or received zoning approval. Further, the disposal of waste is a conditional use on land zoned M-3 and the defendants have not applied for and received zoning approval and, it is not even a permitted use for the property designated for A-3 zoning. In addition, the defendants have been dumping, burying, and/or spreading, industrial waste at the Rocky Ridge Development property in violation of Article I, Section 103.7 of the Benton Township Zoning Resolution. The process they are engaged in is a violation of the Zoning Resolution in and of itself, let alone burying the waste at the property. Lastly, they have been operating a borrow pit under the guise of digging a pond without Zoning Board Approval. This includes the transfer of soil between zoning designations in violation of the Zoning Resolution. Further, the defendants have and continue to dispose of solid industrial waste and further intend upon creating a solid waste landfill in a quarry under the unlawful guise of a beneficial use described as "providing increased elevation and improving drainage on low lying areas." With respect to this last concern, the Plaintiffs acknowledge that their landfill prohibition

in the zoning resolution maybe preempted to the extent that Ohio Revised Code Section 3734 applies, however, Ohio EPA has exempted the protections provided to the Township and its residents. These protections and benefits that are being exempted by Ohio EPA without regard to local safety concerns through the issuance of the Beneficial Use permit. [3] This permit does not usurp local zoning authority.

On October 13, 2016 defendant, Rocky Ridge was cited with a zoning violation for dumping industrial waste at the southwestern end of the quarry property, an area zoned A-1 Agricultural. On November 16, 2016, the defendants, through their lawyers, were again notified of a violation and advised that the violation prohibited a change in zoning classifications. Two Criminal Complaints were filed in Ottawa County Municipal Court by Zoning Commissioner Mike Reif. Nevertheless, the defendants continue to operate in violation of the Benton Township Zoning Resolution and have ignored the demands of the Township to follow its Zoning Code.

Moreover, as discussed above, the defendants continue to dig a borrow pit without a Zoning Certificate and despite being advised that such a Certificate was required before digging, they started to dig (approximately 3 weeks ago,) and continue to dig the pit. Only recently was the application submitted to construct a farm pond. The application will be reviewed and is subject to administrative review so the application itself is not ripe for review by this court, but the activity must cease pending the issuance of a Zoning Certificate. This is critical since the "pond" application creates multiple concerns, including but not limited to, obtaining proper permits[4], erosion controls, concerns over flooding, riparian rights, and the size of the "pond".

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[3] Benton Township is challenging the designation of the activities taking place under the guise of "beneficial use" under the permit issued (and reissued) before the Environmental Review Appeals Commission ("ERAC") the tribunal with exclusive jurisdiction over the permit that issue. However, the permit does not usurp Township zoning or the right for the Township to seek to abate a nuisance created by ignoring Township Zoning requirements.

[4] Aside from zoning laws and Environmental Protection Agency regulated laws, multiple laws may be applicable to the defendants borrow pit that is ultimately to be converted to a pond. To name some, The Ohio Department of Natural Resources("ODNR") has a Stream Liter Law at Ohio Rev. Code Section 1531.29, Storm water permits are

Article XI, Section 1101 entitled "Zoning Certificates" of the Benton Township Zoning Resolution, reads in pertinent part:

> It will be unlawful for an owner to use or to permit the use of ...land, or part thereof, hereafter created, erected, changed, converted or enlarged wholly or partly, until a zoning certificate shall have been issued by the Zoning Inspector.... No permit for excavation, construction or reconstruction shall be issued by the Zoning Inspector unless the plans, specifications and the intended use conforms to the provisions of this resolution.

Article XI, Section 1101, Benton Township Zoning Resolution.

The defendants have only applied for one Zoning Certificate, for the "farm pond". They have not been issued the required Zoning Certificates but continue to work in violation of the Benton Township Zoning Resolution.

D. **The Defendants Cannot Spread, Store, Mix or Bury Industrial Waste in the Township without Obtaining a Variance.**

Article I, Section 103.7 of the Zoning Resolution states, in pertinent part: "The dumping and/or burying and/or spreading, in any manner, of sewage and/or sewage sludge and /or industrial waste is fully prohibited in all 11 zoning classifications listed..." As sated above, subsequently two additional classifications were added to the zoning resolution and the amendment was amended to include all 13 classifications. In addition, Ohio law has recognized that the spreading of sludge on agricultural property for agricultural purposes was exempt from township zoning authority. In this case, the waste being spread is industrial waste, not for agricultural purposes and much of it is being spread on non-agriculturally zoned property. Indeed, the stated reason for placing this waste on the subject property is to increase elevation and improve drainage of low lying areas. This clearly violates the Zoning Resolution.

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required for construction activities disturbing more than an acre, Ohio Rev Code Section 1511.02(E)(2). Also, orthophosphate added to drinking water to form a protective coating on pipes to inhibit corrosion and protect against lead is a low magnitude source of phosphorus, which causes toxic algal blooms.

The defendants will argue that this provision of the zoning code is preempted by state law and therefore void. However, in determining if a state statute preempts a local regulation, the general test is whether there is a conflict between the two provisions. In determining whether an ordinance conflicts with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa. *Struthers v Sokol, (1923) 108 Ohio St. 263, 140 N.E.2d 519, para. 2 of syllabus.*

While Ohio law does regulate industrial solid waste, it does not explicitly permit the spreading of industrial waste as being done in this instance. In fact, Ohio law prohibits the disposal of industrial waste at unpermitted solid waste disposal facilities unless the Ohio EPA Director provides an exemption from its waste regulations. *Ohio Rev. Code Section 3734.02(G).* Similarly, Benton Township prohibits the spreading of industrial waste on land. Such activity would require a variance. The Benton County Zoning prohibition is not more stringent than the state law with respect to the spreading or disposal of industrial waste and thus, it is not preempted. The defendants have not even attempted to apply for a Zoning Certificate or variance for the non-conforming use of spreading and burying industrial waste in the township. Accordingly, they are in violation of the zoning resolution.

E. **The Defendants are Endangering the Health and Safety of the Townships residents and Are Creating A Nuisance.**

The Ohio Rev. Code Section 6111.04(A)(1) states:

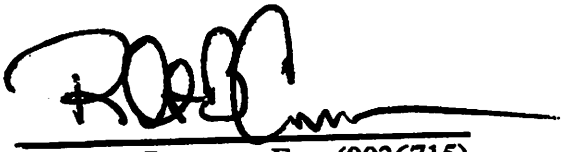
> "No person shall cause or place or cause to be place any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state."

As stated above, the defendants have dug into the ground, down to bedrock and buried industrial waste. The purpose of increasing elevation and assisting drainage is suspect with a simple review

of the operation. The intent and purpose of the defendant's operation is to dispose of the waste relocated from Toledo. The residents of the Township closest to the defendant's activities have commissioned a drone photographer and identified the defendants conduct in violation of Ohio law. It is against Ohio law to place waste in waters of the state and directly endangers the resident's safety since they all use ground water for their drinking water. Moreover, it threatens the quantity of water available to the residents as well. Judge Learned Hand stated, when assessing possible harm in an environmental endangerment case, as follows: *"Danger ...is not set by a fixed probability of harm, but is composed of reciprocal elements of risk and harm, or probability and severity.... That is to say that the public health may properly be found to be endangered both by a lesser risk of a greater harm or a greater risk of a lesser harm." Ethyl Corp v. United States,541 F.2d 1,18 (1976).* The ground water studies required to evaluate the defendant's operation and plan have not even been completed. Yet, the defendants have dug into the ground and mixed industrial waste a several feet above the residents' aquifer.

While the case cited above is not cited because it is applicable to this case, the quote is applicable as insight into protecting the safety of the residents of Benton Township. In the instant case the defendants are spreading industrial waste directly adjacent to residents that use the ground water for their families drinking water. They are digging a borrow pit and altering storm water run-off and have already caused one local property to flood, they are ignoring zoning designations and laws passed for the safety of the community. They are placing waste into waters of the state in violation of State and local law and the beneficial reuse permit they received from Ohio EPA.

Respectfully Submitted,



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Ottawa County Courthouse
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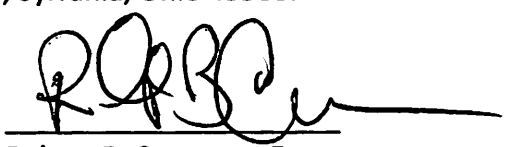
Port Clinton, Ohio 43452
prosecutor@co.ottawa.oh.us
(419) 734-6845

Attorney for Plaintiff Benton Township

CERTIFICATE OF SERVICE

A copy of the Verified Complaint, Motion for Temporary and Preliminary Injunction, Brief in Support of Motion for Temporary and Preliminary Injunctive Relief and Proposed Order were sent by electronic mail to counsel for the defendants, Eric P. Barger, Eastman & Smith, 100 East Broad St. ,21st floor, Columbus, Ohio 43215 , bpbarger@eastmansmith.com and by Regular U.S. Mail to the defendants Rocky Ridge Development, LLC , 3017 N. State Route 590, Graytown, Ohio 43431 and Stansley Industries, Inc. , 3793 Silica Rd, Sylvania, Ohio 43560.



Robert B. Casarona, Esq.

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP Plaintiff, v. ROCKY RIDGE DEVELOPMENT, LLC et. al Defendant.	)	CASE NO. JUDGE **TEMPORARY RESTRAINING ORDER AND NOTICE OF PRELIMINARY INJUNCTION HEARING**

This cause came to be heard on Plaintiff's Verified Complaint and Motion for Temporary and Preliminary Injunction. Benton Township has moved for this injunction because the health and safety, comfort and convenience of its residents are endangered by the defendant's refusal to comply with the law. The grounds for the Motion are well taken, the Plaintiffs will suffer immediate, permanent irreparable harm unless the temporary injunction is granted, therefore the Motion is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the defendants and any affiliated company owned or controlled by the defendants or their principal shareholders, and all persons acting on behalf or in concert with the defendants, be enjoined and restrained from operating in Benton Township until and unless they are in compliance with the Benton Township Zoning Resolution and the laws of the State of Ohio. This includes but is not limited to the digging of a borrow pit and/or constructing a farm pond, spreading, burying or mixing of waste, removing topsoil where such removal is a conditional use, changing the drainage of the

property, placing any material into waters of the state and/or otherwise violating the zoning laws of Benton Township.

IT IS FURTHER ORDERED that this order will expire fourteen (14) days from this entry unless within such time, the order, for good cause shown, is extended unless the defendants consent to the orders extension for a longer period.

The plaintiff's application for a preliminary injunction is assigned for hearing on _____, 2017 at _____ a.m. /p.m.

ISSUED this ____ day of _____,2017.

_____
JUDGE

EXHIBIT D

GARY A. KOHLI
CLERK OF COURTS
OTTAWA COUNTY, OHIO
2017 FEB 23 P 12:28

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP Plaintiff, v. ROCKY RIDGE DEVELOPMENT, LLC et. al Defendant.	)	CASE NO. 17CV064 JUDGE **TEMPORARY RESTRAINING ORDER AND NOTICE OF PRELIMINARY INJUNCTION HEARING**

This cause came to be heard on Plaintiff's Verified Complaint and Motion for Temporary and Preliminary Injunction. Benton Township has moved for this injunction because the health and safety, comfort and convenience of its residents are endangered by the defendant's refusal to comply with the law. The grounds for the Motion are well taken, the Plaintiffs will suffer immediate, permanent irreparable harm unless the temporary injunction is granted, therefore the Motion is hereby granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the defendants and any affiliated company owned or controlled by the defendants or their principal shareholders, and all persons acting on behalf or in concert with the defendants, be enjoined and restrained from operating in Benton Township until and unless they are in compliance with the Benton Township Zoning Resolution and the laws of the State of Ohio. This includes but is not limited to the digging of a borrow pit and/or constructing a farm pond, spreading, burying or mixing of waste, removing topsoil where such removal is a conditional use, changing the drainage of the

property, placing any material into waters of the state and/or otherwise violating the zoning laws of Benton Township.

IT IS FURTHER ORDERED that this order will expire fourteen (14) days from this entry unless within such time, the order, for good cause shown, is extended unless the defendants consent to the orders extension for a longer period.

The plaintiff's application for a preliminary injunction is assigned for hearing on Mar 7, 2017 at 8:30 a.m./p.m.

ISSUED this 23 day of Feb, 2017.

JUDGE

EXHIBIT E

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP,	:	CASE NO. 17 CV 064
Plaintiff,	:	JUDGE BRUCE WINTERS
v.	:	
ROCKY RIDGE DEVELOPMENT, LLC, et al.,	:	
Defendants.	:	

MOTION TO INTERVENE OF CRAIG BUTLER, DIRECTOR OF THE OHIO ENVIRONMENTAL PROTECTION AGENCY

Pursuant to Civ.R. 24(B), Craig Butler, Director of the Ohio Environmental Protection Agency ("Director" or "Ohio EPA"), by and through his counsel Michael DeWine, the Ohio Attorney General, respectfully requests to intervene in this action for the limited purpose of adjudicating the Court's jurisdiction over the permitting and enforcement authority of the Director and adjudicating the issue of whether the State statutes at issue preempt the local zoning ordinances. A memorandum of law in support of the Motion to Intervene is attached. Additionally, the Director submits a proposed Order Granting Intervention, and a Motion to Dismiss (Attachment),to be filed instanter if the Motion to Intervene is granted.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Ohio Attorney General

MOLLY S. COREY (0079287)
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Environmental Enforcement Section
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Columbus, Ohio 43215
Phone: 614-466-5265/Fax: 614-752-2441
Molly.Corey@ohioattorneygeneral.gov
Counsel for the Director

MEMORANDUM IN SUPPORT

I. Procedural Background

On February 23, 2017, Plaintiff, Benton Township ("Township"), filed a Verified Complaint for Injunctive and Declaratory Relief ("Complaint") and a Motion for Temporary and Preliminary Injunctive Relief ("Motion") against Rocky Ridge Development, LLC ("Rocky Ridge") and Stansley Industries, Inc. ("Stansley"). Plaintiff alleges that Rocky Ridge and Stansley violated local zoning ordinances by disposing of spent lime from the Collins Park Water Treatment Plant without first obtaining certain authorizations from the Township and in violation of the general zoning designation. The Director authorized Defendants to conduct the beneficial use activities through a Land Application Management Plan ("LAMP") permit issued to Defendants on February 14, 2017.

Rather than appeal the issuance of the LAMP permit and invoke the statutory jurisdiction of an administrative tribunal, Plaintiff instead chose to file the Complaint and Motion with this Court in an attempt to halt the activities authorized under the LAMP permit. In requesting that

Defendants cease all activities previously authorized by the Director, Plaintiff is actually challenging the terms and conditions of the LAMP permit. But while Plaintiff has challenged the Director's decision by filing this action, Plaintiff failed to name the Director as a defendant and, as such, failed to notify the Director of its request for a Temporary Restraining Order. In light of this, the hearing on the TRO proceeded without input from the Director. On February 23, 2017, this Court issued the TRO, and scheduled a preliminary injunction hearing for March 7, 2017.

II. Argument

A. The Director satisfies the Civ.R. 24(A) standards for intervention of right.

Intervention of right under Civ.R. 24(A)(2) sets forth four requirements for nonstatutory intervention: (1) timely application; (2) the applicant claims "an interest relating to the property or transaction which is the subject of the action"; (3) the applicant is "so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest"; and (4) the applicant's interest is not adequately represented by existing parties. The Ohio Supreme Court has characterized its treatment of nonstatutory intervention of right as "liberal construction," favoring intervention. *Department of Adm. Services, Office of Collective Bargaining v. State Emp. Relations Bd., et al.*, 54 Ohio ST.3d 48, 51, 562 N.E.2d 125; *See also State ex rel. Smith v. Frost, et al*, 74 Ohio St.3d 107, 656 N.E.2d 673 (1995) (affirming intervention of a village in declaratory judgment case where the subject of the action was instituted by the village); *State ex rel. LTV Steel Co. v. Gwin*, 64 Ohio St.3d 245, 594 N.E.2d 616 (1992) (affirming intervention of the Administrator of the Bureau of Worker's Compensation in an Ohio Industrial Commission case based on the Administrator's interest in protecting the State Surplus Fund).

The Director is requesting to intervene for the limited purpose of protecting the administrative and permitting process of the Ohio EPA. While intervention for a limited purpose is not specifically set forth in Civ.R. 24, Ohio courts have granted limited intervention for a variety of reasons. *See, e.g., Crittenden Court Apt. Assoc. v. Jacobson/Reliance,* 8th Dist. Cuyahoga Nos. 85395, 85452, 2005-Ohio-1993 (affirming intervention of a general contractor for the limited purpose of participating in preparation and submission to jury of written interrogatories); *Myers v. Basobas,* 129 Ohio App.3d 692, 718 N.E.2d 1001 (10th Dist.1998) (upholding the right of a third-party patient to intervene in an action brought by against mental health facilities to protect privileged communications). Director seeks only to protect the rights and duties delegated to him by the General Assembly, and does not intent to interfere with any private cause of action that may be sustained between the Plaintiff and Defendants.[1]

(i.) The Motion to Intervene will be filed less than one week after the filing of the Complaint and is therefore timely.

The Director's Motion to Intervene is timely as only six (6) days have passed since Plaintiff filed its Complaint and Motion. The Ohio Supreme Court has identified five (5) factors that a court must consider in determining timeliness:

(1) The point to which the suit had progressed;
(2) The purpose for which intervention is sought;
(3) The length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case;
(4) The prejudice to the original parties due to the proposed intervenor's failure after he knew or reasonably should have known of his interest in the case to apply promptly for intervention; and
(5) The existence of unusual circumstances mitigating against or in favor of intervention.

[1] Because the Director requests to intervene to raise the jurisdictional issues resulting from the filing of this action, the Director has submitted a Motion to Dismiss with this Motion to Intervene.

State ex rel. First New Shiloh Baptist Church v. Meagher, 82 Ohio ST.3d 501, 503, 696 N.E.2d 1058 (1998). The timeliness of a motion to intervene is a matter within the sound discretion of the trial judge. *Id.*

First, it is clear from the facts that the Director's Motion to Intervene is timely. This suit was filed only six (6) days ago and therefore is in its infancy. The fact that the Court issued a TRO to the Plaintiff and scheduled a preliminary injunction hearing should not bar the Director's intervention, as the TRO was issued for only a limited period. Permitting the Director to intervene will also allow the Director to enter this action prior to the preliminary injunction hearing, and therefore protect the rights of this necessary party at the earliest possible stage.

Second, the Director seeks intervention for the limited purpose of protecting an essential permitting process authorized under Ohio's environmental statutes and regulations under R.C. Chapters 3745 and 6111. By asking this Court to prohibit the activities of a private party that are authorized by a permit issued by Ohio EPA, the Plaintiff is essentially asking this Court to adjudicate the merits of the permit itself. Such adjudication belongs not in a court of common pleas, but before the Environmental Review Appeals Commission ("Commission") under R.C. 3745.04(A), which grants the Commission "exclusive original jurisdiction" over the Director's action such as permits like the LAMP permit that is the subject of the Plaintiff's Complaint. This purpose extends to the impact of local zoning ordinances on the permitting process, as any declaration prohibiting that which the Director authorizes by license or permit has the practical effect of placing additional requirements on the Director not required by statute or rule. The Director therefore not only intervenes to defend the issuance of the permit, but also to protect the administrative process that Plaintiff attempts to sidestep by filing this action.

Third, as stated above, the Director became aware of the Plaintiff's Complaint and Motion on the very day that it was filed, which was merely six (6) days ago. Upon notification, which was not provided by the Plaintiff, the Director immediately consulted with his counsel to determine the steps necessary to protect the regulatory process. Filing this Motion to Intervene less than one full week after notice of this action is more than reasonable. This fact also satisfies the fourth prong, as the Director's prompt filing renders analysis under this prong moot.

Finally, the unusual circumstances created by the Plaintiff in its decision to make allegations against an unnamed defendant mitigate in favor of allowing the Director to intervene. The Plaintiff should not be permitted to allege failures on the part of any State agency as a basis for its Complaint and Motion without providing the opportunity for the agency Director to appear and defend such allegations. Plaintiff's request that this Court adjudicate the terms and conditions of the LAMP contravenes the R.C. Chapter 3745 administrative process; fortunately, this Court can correct Plaintiff's error by granting the Director's Motion before the case proceeds any further.

(ii.) The subject of the action is activity authorized under a LAMP issued by the Director.

Plaintiff attempts to couch this action under the guise of a zoning violation case. While doing so, Plaintiff proceeds to impugn the Director's permitting and enforcement decisions, which are wholly unrelated to local zoning ordinances. For example, Plaintiff's Complaint alleges that the beneficial use described in the LAMP is "not true" for reasons *unrelated* to local zoning. Complaint at ¶14. This statement challenges the very basis on which the LAMP permit was issued. The Director respectfully asserts that this Court lacks jurisdiction to hear a challenge

to the LAMP permit, since the Commission has exclusive original jurisdiction. R.C. 3745.04(A).

(iii.) Disposition of this action, rather than dismissing all claims related to the LAMP permit, may impede the Director's permitting and enforcement authority.

If this Court grants Plaintiff's request and orders all operations authorized under the LAMP permit to cease based on the various health and safety violations asserted by Plaintiff, then this Court is essentially finding the LAMP permit to be unlawfully issued. Only ERAC has the authority to adjudicate the terms and conditions of the LAMP permit. A decision by this Court, other than dismissal, would not only affect the LAMP permit in question, but impacts other permitting decisions made by the Director. With this outcome at stake, the Director must be permitted to intervene in order to protect his rights.

In addition to challenging the Director's decision to issue the LAMP permit, as discussed above, Plaintiff alleges various violations in both the Complaint and Motion related to nuisance, groundwater contamination, and general environmental harm. All of these potential issues are contemplated by the Director, and addressed in the LAMP permit; in fact, the explicit *purpose* of the LAMP permit, and R.C. Chapter 6111, is to protect human health and the environment. If such violations occur, the Director may take all steps to enforce the terms of the LAMP and Ohio's environmental laws and rules, including court action and civil penalties. R.C. 6111.07(B) and 6111.09(A). If the current Defendants violate the terms of the LAMP permit, the *Director* is authorized to take action, and any resulting decision is subject to ERAC's review – not the review of this Court. *Id.*

Plaintiff completely ignores this important tenet of administrative law – that enforcing a regulatory scheme is the legal province of the administrative decision making arm of government

– and attempts an illegal end-run around the administrative review process by asking this Court to essentially find the current Defendants in violation of the LAMP permit. *See also* R.C. 3745.011 (The Ohio EPA "shall A) Promulgate and put into execution a long term comprehensive plan and program to conserve, protect, and enhance the air, water, and other natural resources of the state; (B) Prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the people of the state.").

(iv.) The Director's interest in ensuring that the proper administrative review process is followed with respect to the Director's delegated authority cannot be adequately represented by any other party.

As stated above, Plaintiff's Complaint makes specific allegations against the Director. These allegations call into question actions taken by the *Director:* the decision to issue the LAMP permit and the terms included in the LAMP permit. Complaint at ¶14, ¶¶16-18. While the current Defendants are tasked with defending the allegations of zoning ordinance violations - whether or not related to their disposal activities - the Defendants cannot represent the Director's interest in defending the regulatory program and ensuring that challenges to this program be heard in the proper forum: ERAC. Only the Director stands in this unique position, and he must be permitted the opportunity to intervene in this action.

B. The declaratory judgment statute requires that all interested persons be made parties to the action.

The plain language of the declaratory judgment statute also requires the Director's intervention. To satisfy R.C. 2127.12, all interested persons who would be affected by the declaration must be made parties to the action. Plaintiff requests a declaration from the Court that the "zoning prohibitions against spreading sludge or industrial waste is valid, enforceable and

applicable to the defendants conduct." Complaint at Prayer for Relief E. If this declaration is made, it will render the LAMP invalid by prohibiting the very activity that the Director authorized.

While Plaintiff does not include the Director in this request – or, for that matter, in this case at all – such a declaration will impact the Director's future permitting decisions. The General Assembly delegated specific authority to the Director to administer Ohio's environmental laws, including R.C. Chapter 6111. A declaration that local zoning ordinances in conflict with the Director's statutory authority are valid and enforceable essentially authorizes the local zoning board to usurp the very authority granted by the General Assembly. Recognizing this potential outcome, courts in Ohio have long required a finding that the local ordinance is valid in light of the conflicting state statute. *See Perry v. Providence Twp.*, 63 Ohio App.3d 377, 578 N.E.2d 886 (6th Dist.1991) (holding that a zoning resolution totally banning land application of sludge was in direct conflict with R.C. 6111.46, which permits land application of the material). Failure to conduct this evaluation would result in confusion, lead to inconsistent results, and effectively moot the Director's permitting decisions.

The applicant for a LAMP permit is subject to a detailed evaluation and review process, conducted by the Director and his staff, before approval is granted. This review is conducted pursuant to R.C. Chapter 6111 and accompanying rules. Many factors are considered during this review process; however, compliance with local zoning ordinances is not among the items required by law. A declaration that compliance with local zoning ordinances is required before the recipient of a LAMP permit may operate would require the Director to include zoning considerations for each of the approximately 2,200 subcounty level jurisdictions within Ohio's 88 counties – an impossible task and one the Director has no legal obligation to make – in the

LAMP permit review. Because such a declaration will affect the Director's ability to administer Ohio's environmental programs, he must be made a party to this action for the purpose of adjudicating these specific issues.

III. Conclusion

The Director respectfully urges this Court to take the liberal view espoused by the Ohio Supreme Court and grant the Director's Motion to Intervene for the limited purposes set forth above.

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/Molly S. Corey/

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CERTIFICATE OF SERVICE

I hereby certify that on March 18 2017 a true copy of the foregoing *Motion to Intervene of Craig Butler, Director of the Ohio Environmental Protection Agency* was served upon the following parties via ordinary US mail and by electronic mail, at the addresses below:

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EXHIBIT E

ATTACHMENT to Director's Motion to Intervene

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

BENTON TOWNSHIP,	:	CASE NO. 17 CV 064
Plaintiff,	:	JUDGE BRUCE WINTERS
v.	:	
ROCKY RIDGE DEVELOPMENT, LLC, et al.,	:	
Defendants.	:	

MOTION TO DISMISS OF CRAIG BUTLER, DIRECTOR OF THE OHIO ENVIRONMENTAL PROTECTION AGENCY

Craig Butler, Director of the Ohio Environmental Protection Agency ("Director") respectfully requests that this Court dismiss all claims based on the Land Application Management Plan ("LAMP") issued to Defendants Stansley Industries, Inc. ("Stansley") and Rocky Ridge Development, LLC ("Rocky Ridge") on February 14, 2017. The Ohio Environmental Review Appeals Commission ("the Commission") has exclusive jurisdiction over the Director's actions, including issuance of the LAMP; therefore, this Court lacks jurisdiction to hear any claims raised by Plaintiff relating to the issuance or enforcement of the LAMP. Additionally, Plaintiff fails to state a claim upon which relief may be granted because the local zoning ordinances are preempted by state law. A memorandum in support is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. Background

On February 23, 2017, Plaintiff, Benton Township, filed a Verified Complaint for Injunctive and Declaratory Relief ("Complaint") and a Motion for Temporary and Preliminary Injunctive Relief ("Motion") against Rocky Ridge Development, LLC ("Rocky Ridge") and Stansley Industries, Inc. ("Stansley"). Plaintiff alleges that Rocky Ridge and Stansley violated local zoning ordinances by disposing of spent lime from the Collins Park Water Treatment Plant without first obtaining certain authorizations from the Township and in violation of the general zoning designation. Defendants were authorized to conduct the disposal activities by the Director of Ohio EPA ("Director") through a Land Application Management Plan ("LAMP") permit the Director issued to Defendants on February 14, 2017.

Rather than appeal the issuance of the LAMP permit, Plaintiff instead chose to file the Complaint and Motion with this Court in an attempt to halt the activities authorized under the

LAMP permit. Plaintiff failed to name the Director as a defendant and, as such, failed to notify the Director of its request for a Temporary Restraining Order. In light of this, the hearing on the TRO proceeded without input from the Director. On February 23, 2017, this Court issued the TRO and scheduled a preliminary injunction hearing for March 7, 2017.

II. Argument

A. This Court Lacks Subject Matter Jurisdiction to Hear this Action

(i.) R.C. 3745.04(B) provides the exclusive remedy, an administrative appeal, for challenging the LAMP permit.

The General Assembly has provided one tribunal that has "exclusive original jurisdiction" over actions of the Director of Ohio EPA—the Environmental Review Appeals Commission ("Commission"). R.C. 3745.04(B). Since the LAMP permit is such an action under R.C. 3745.04(A), Benton Township's sole remedy challenging the LAMP permit was to file an appeal with the Commission.

Here, however, Plaintiff makes a direct challenge to the terms and conditions of the LAMP in Paragraph 14 of its Complaint, asserting that the stated purposes for which the Director approved beneficial use in the LAMP permit – to increase elevation and improve drainage in existing low-lying areas – are "not true." A similar accusation is made in Plaintiff's Motion, wherein Plaintiff states that Defendants are acting under the "unlawful guise of a beneficial use." Motion at p. 11. Plaintiff then attempts to build its case against the Defendants on the premise that the activities authorized under the LAMP permit are not only occurring in violation of local zoning ordinances, but also are causing environmental harm and posing a threat to health and safety. These challenges – to the terms and conditions of the LAMP and to activities authorized

under the LAMP – belong not in this Court, but must be raised through an appeal to the Commission.

The Ohio Supreme Court has held that where "an agency is charged with enforcement of certain laws, these laws do not confer upon an individual the right to bring a private civil action absent a 'clear implication' that such a remedy was intended by the legislature." *Fawcett v. G.G. Murphy & Co.* (1976), 46 Ohio St.2d 245, 248-249; *Save the Lake v. City of Hillsboro* (2004), 158 Ohio App.3d 318, 324; *see also Doe v. Adkins* (1996) 110 Ohio App.3d 427, 435-436 (private right of action to enforce a statutory or administrative code section does not exist unless expressly or implicitly created by statute or regulation). Specific to the Ohio EPA, "[i]t is well-settled that the statutory procedure for review of [Ohio EPA] actions set forth in R.C. Chapter 3745 is exclusive and that courts of common pleas are without jurisdiction to proceed in actions for declaratory and injunctive relief involving controversies under R.C. Chapter 3745." *State ex rel. Maynard v. Whitfield*, 12 Ohio St.3d 49, 50, 465 N.E.2d 406 (1984) (citing *State ex rel. Williams v. Bozarth*, 55 Ohio St.2d 34, 36-7, 377 N.E.2d 1006 (1978); *Warren Molded Plastics, Inc. v. Williams*, 56 Ohio St.2d 352, 353-54, 384 N.E.2d 253 (1978)).

Pursuant to Ohio Adm.Code 3746-5-01(A), any person aggrieved or adversely affected by the action of the Director may appeal to the Commission within thirty days of the date of the action. A Director's "action" includes the issuance, denial, or modification of a license or permit, or approval of plans pursuant to law or rule. R.C. 3745.04. If an action qualifies under this section, then the Commission has "exclusive original jurisdiction" over the matter. Ohio Adm.Code 3746-5-01(B).

In this particular case, the Director's issuance of the LAMP permit qualifies as an "action" for purposes of R.C. 3745.04. Any challenge to the LAMP permit, as set forth in statute

and communicated in the LAMP permit itself, must be made by filing an appeal with the Commission within thirty (30) days. The Director issued the LAMP permit on February 14, 2017; thus, Plaintiff – and any other aggrieved party – must file an appeal by March 16, 2017. As of the date of this filing, Plaintiff has not filed an appeal with the Commission, even though Plaintiff is aware of this right and represented to this Court that an appeal has been filed. Motion at p. 4, fn. 3.[1] Even if Plaintiff were to file an appeal with the Commission before the deadline, Plaintiff still cannot challenge the LAMP permit in this Court, and any such allegations must be dismissed.

(ii.) Violations of the LAMP and Ohio's environmental laws must be addressed through the proper administrative channels.

In addition to challenging the terms and conditions of the LAMP permit itself, Plaintiff bases its Complaint on alleged violations of activities authorized under the LAMP permit. Any violations of the terms and conditions of the LAMP permit, or of the laws administered pursuant to R.C. Chapter 3745, fall under the jurisdiction of the Director. As such, these violations must be challenged through the proper administrative channels, processes that cannot be avoided by filing a complaint in common pleas court.

Ohio law tasks the Director with administering a comprehensive list of environmental laws. R.C. 3745.01. Included in this list are the laws pertinent to the issue at hand: prevention, control, and abatement of air and water pollution; and the disposal and treatment of wastes, including industrial wastes and sewage. *Id.* When the Director authorizes an activity pursuant to statute, such as the LAMP permit, the Director is then responsible for enforcing the terms and conditions of that authorization. Regardless of whether the Director issues a permit or license,

[1] According to ERAC's public docket, available at http://erac.ohio.gov/CaseSearch.aspx.

R.C. 3745.01 and related environmental statutes require the Director to ensure compliance with the exhaustive list set of environmental laws set forth in this section.

The Director administers an enforcement program, and may assess a remedy from a variety of enforcement options when a violation occurs. Depending on the specifics of the violation and the controlling statutes, the Director may issue a final order, which then may be appealed to the Commission. The Director may also request that the Ohio Attorney General bring an action for injunction, and file a civil complaint in a court of common pleas, for violations of R.C. Chapter 6111, rules adopted under the chapter, and terms and conditions of permits or licenses. R.C. 6111.07. The same authority exists within the additional chapters of the Revised Code under the Director's regulatory authority.

The fact that the Director is responsible for enforcement of Ohio's environmental laws does not prohibit a citizen or the representative of a political subdivision from raising concerns regarding environmental violations. Any person aggrieved or adversely affected by a violation of Ohio's environmental laws, including the officer of a state agency or political subdivision, may file a verified complaint with the Director. R.C. 3745.08(A). The Director is required to promptly investigate the complaint. R.C. 3745.08(B). "If, upon completion of the investigation, the director determines that a violation, as alleged, has occurred, is occurring, or will occur, the director may enter such order as may be necessary, request the attorney general to commence appropriate legal proceedings, or, where the director determines that prior violations have been terminated and that future violations of the same kind are unlikely to occur, the director may dismiss the complaint." *Id.* If the Director finds no further action necessary and dismisses the verified complaint, the dismissal is considered a final action and may be appealed to the Commission.

In this case, Plaintiff alleges violations of environmental law that fall squarely within the jurisdiction of the Director and therefore may not be challenged in this Court. For example, Plaintiff states that Defendant's disposal is "endangering groundwater quality and quantity...and endangering the safety and health" of local residents. Complaint at ¶16. Plaintiffs also allege direct violations of the LAMP permit, including "ignoring" the beneficial use and placing waste into waters of the state. Complaint at ¶17. Each of these alleged violations is within the Director's regulatory authority and must be handled through the proper administrative process. In choosing to ignore the proper administrative process and instead choosing to file with this Court, Plaintiff is making an end-run around the statutory review process and is thus interfering with the Director's statutorily delegated duties.

B. Plaintiff Fails to State a Claim For Which Relief May Be Granted.

Plaintiff's Complaint fails to state a claim for which relief may be granted, because the local zoning ordinances allegedly violated by the Defendants are preempted by State law. A complaint should be dismissed pursuant to Civ.R. 12(B)(6) where it appears beyond doubt that the plaintiff can prove no set of facts warranting the cause of action. *Volbers-Klarich v. Middletown Mgmt., Inc.*, 125 Ohio St.3d 494, 2010-Ohio-2057, 929 N.E.2d 434, ¶ 12, citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.3d 242, syllabus, 327 N.E.2d 753 (1975). While a court must accept all factual allegations of the complaint as true and afford reasonable inferences in the nonmoving party's favor, *Volbers-Klarich* at ¶ 12, a court need not accept unsupported legal conclusions as true, *State ex rel. Seikbert v. Wilkinson*, 69 Ohio St.3d 489, 490, 633 N.E.2d 1128 (1994).

Plaintiff cannot sustain any zoning violations claims that are preempted by Ohio's environmental laws. Municipalities are authorized to enforce local laws only if they are not in

conflict with general law. Section 3, Article VIII of the Ohio Constitution. Courts use a three-part test to determine whether a municipality has exceeded this authority: (1) is the ordinance an exercise of the police power rather than of local self-government; (2) is the statute a general law; and (3) is the ordinance in conflict with the statute. *Mendenhall v. City of Akron,* 117 Ohio St.3d 33, 2008-Ohio-270 ¶ 17.

In this case, Plaintiff admits that the zoning ordinances are an exercise of the police power, stating that the zoning regulations were "passed to protect public safety." Complaint at ¶13. Also clear is the status of R.C. Chapter 6111 as a "general law," because it (1) is part of a statewide and comprehensive enactment; (2) applies to all parts of the state alike and operates uniformly throughout the state; (3) sets forth police, sanitary, or similar regulations; and (4) prescribes a rule of conduct upon citizens generally. *See City of Canton v. State,* 95 Ohio St.3d 149, 2002-Ohio-2005, 766 N.E.2d 963 (2002).

The only remaining question is whether the local zoning ordinances at issue in this matter are in conflict with R.C. Chapter 6111. "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Perry v. Providence Twp.,* 63 Ohio App.3d 377, 380, 578 N.E.2d 886 (6th Dist.1991). In *Perry*, the court found that a zoning resolution totally banning land application of sludge was in direct conflict with state law permitting land application and therefore was preempted. *Id.* at 382.

Following the precedent set by the Sixth District in *Perry*, section 103.7 of the Benton Township Zoning Resolution, which prohibits land application of sewage sludge and industrial waste, is preempted by R.C. Chapter 6111. Plaintiff requests that this Court declare section 103.7 valid, enforceable, and applicable in this case. Complaint at Prayer for Relief E. In light of the

conflict, however, Plaintiff's request is invalid, and should be dismissed as Plaintiff cannot sustain such a claim. The Court should also extend the same analysis and conclusion to all zoning ordinances in the Complaint asserted by Plaintiff in an attempt to restrict activity authorized under R.C. Chapter 6111 and under the LAMP permit issued to Defendants.

III. Conclusion

For the reasons above, the Director respectfully requests that this Court dismiss all claims related to the LAMP permit for lack of subject matter jurisdiction and all counts originating in zoning ordinances that conflict with State statute for failure to state a claim for which relief may be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2017 a true copy of the foregoing *Motion to Dismiss of Craig Butler, Director of the Ohio Environmental Protection Agency* was served upon the following parties via ordinary US mail and by electronic mail, at the addresses below:

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EXHIBIT F

IN THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

Benton Township,	:	Case No. 17 CV 064
Plaintiff,	:	(Hon. Bruce Winters)
vs.	:	**MOTION TO DISMISS PURSUANT TO CIV.R. 12(B)(1) AND 12(B)(6)**
Rocky Ridge Development, LLC, et al.,	:	**AND TO DISSOLVE TEMPORARY RESTRAINING ORDER**
Defendants.	:	**PURSUANT TO CIV.R. 65(A) AND MEMORANDUM IN SUPPORT**
	:	**THEREOF**
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Pursuant to Civil Rules 12(B)(1) and 12(B)(6), Defendant Rocky Ridge Development, LLC (hereinafter, **"RRD"** or **"Defendant"**) moves to dismiss Plaintiff Benton Township's (**"Township"**) Verified Complaint because (1) the Court lacks subject matter jurisdiction over the Township's stated claims and (2) the Township has failed to state a claim upon which relief can be granted over which the Court might have jurisdiction. Defendant also moves, pursuant to Civil Rule 65(A), to dissolve the Temporary Restraining Order (**"TRO"**) issued by the Court on February 23, 2017 for the same reasons. The attached Memorandum in Support sets forth the bases for RRD's Motion.

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MEMORANDUM IN SUPPORT OF DEFENDANT ROCKY RIDGE DEVELOPMENT, LLC'S MOTION TO DISMISS PURSUANT TO CIV.R. 12(B)(1) AND 12(B)(6) AND TO DISSOLVE TEMPORARY RESTRAINING ORDER PURSUANT TO CIVIL RULE 65(A)

I. INTRODUCTION

The Township has asked the Court to weigh in on matters of statewide concern lying outside the Court's subject matter jurisdiction. Specifically, statewide general law regulates the beneficial reuse of drinking water treatment material (**"DWTM"**) including spent lime used in such treatment. The determination of how and where such beneficial reuse may occur is vested exclusively with Ohio's Environmental Protection Agency (**"OEPA"**) and any challenges to its determinations must be made in the Environmental Review Appeals Commission (**"ERAC"**), which has exclusive jurisdiction over such matters. The OEPA has permitted RRD's beneficial reuse of DWTM on its property in Benton Township. Indeed, pursuant to its authority, the OEPA has directed RRD to undertake work on the property which would violate the TRO, illustrating the very real jurisdictional conflict. Because the Township asks the Court to usurp the jurisdiction of ERAC by challenging RRD's permitted beneficial reuse of DWTM, the Verified Complaint should be dismissed pursuant to Civil Rule 12(B)(1).

Additionally, and relatedly, the Township asks the Court to enforce its local zoning regulation prohibiting such beneficial reuse of DWTM in all zoning districts, but this regulation is preempted by statewide general law. The Court of Appeals for the Sixth District has so held in *Perry v. Providence Township*, 63 Ohio App.3d 377, 578 N.E.2d 886 (6th Dist. 1991), a case dealing with a virtually identical zoning regulation and another material approved for beneficial reuse. Because the Township's claims rest on a preempted zoning regulation, the Verified Complaint should again be dismissed pursuant to Civil Rule 12(B)(1) and/or 12(B)(6).

Further, while the Township also alleges a nuisance, it has failed to state a viable claim for nuisance. Notably, the only nuisance claim available against an operation like RRD's which is permitted by OEPA, rests in alleging negligence separate and apart from the authorized operations. Here, the Township makes no such allegation. Rather, the Township maintains the operation itself is the nuisance. Such a claim is not allowed. In the absence of a properly pled claim within the narrow category allowed, the Verified Complaint should again be dismissed pursuant to Civil Rule 12(B)(6).

Lastly, for all the foregoing reasons, the Temporary Restraining Order issued on February 23, 2017 should be dissolved pursuant to Civil Rule 65(A).

II. STANDARD OF REVIEW

A. Motion to Dismiss Pursuant to Civ.R. 12(B)(1)

Civil Rule 12(B)(1) provides for dismissal of a complaint where the trial court lacks jurisdiction over the subject matter of the litigation. The "subject matter jurisdiction of a court is a court's power to hear and decide a case upon its merits." *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. The standard of review for dismissal under Civ.R. 12(B)(1) is "whether any cause of action cognizable by the forum has been raised in the complaint." *United States Bank N.A. v. Perdeau*, 6th Dist. Lucas No. L-13-1226, 2014-Ohio-5818, ¶9, citing *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). A motion under Civ.R. 12(B)(1) allows a court to consider any pertinent evidentiary materials outside of the pleadings when determining its own subject matter jurisdiction. *Bates v. GSC Principals*, 6th Dist. Lucas No. L-07-1185, 2008-Ohio-2211, ¶15 citing *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976).

B. Motion to Dismiss Pursuant to Civ.R. 12(B)(6)

"A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. A trial court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the non-moving party." *State v. Botts*, 10th Dist. No. 12AP-822, 2013-Ohio-4051, ¶11 (internal citations omitted). The court may also consider documents referenced in the complaint, even if not attached. *Lisboa v. Lisboa*, 2011-Ohio-351, ¶38 (8th Dist. 2011). In order for a complaint to be dismissed under Civ.R. 12(B)(6), it must appear beyond a doubt from the complaint that the plaintiff can prove no set of facts entitling him to relief. *BMT Mgmt. LLC v. Sandusky Newspapers, Inc.*, 6th Dist. Erie No. E-08-058, 2009-Ohio-2601, ¶9 citing *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753, (1975) syllabus.

III. FACTS

The City of Toledo operates a water treatment plant to provide drinking water to the City of Toledo and surrounding areas. (Verified Complaint, at ¶5). In the process of treating drinking water, the City of Toledo utilizes lime as a DWTM. (*Id.*, at ¶¶ 6, 8). In 2016, the City of Toledo contracted with Custom Ecology of Ohio, Inc. for the "removal and disposal" of the DWTM. (*Id.*, at ¶9).

On November 13, 2014, the OEPA issued a Land Application Management Plan (**"2014 LAMP"**) to Defendant Stansley Industries, Inc. (**"Stansley"**) "to permit the beneficial reuse of lime residuals [*i.e.* the DWTM] in a soil blend as general fill," at the property in question. (*Id.*, at ¶7); (Exhibit A: 2014 LAMP). The beneficial use was to "make grade at the property and create vegetative growth." (*Id.*) On February 14, 2017, the OEPA issued a modified LAMP (**"2017 LAMP"**) adding RRD as a permittee and further defining the beneficial use as "to increase the

elevation and improve drainage in existing low lying areas." (*Id.*, at ¶14); (Exhibit B: 2017 LAMP). Notably, the LAMP authorizes RRD's operation only outside of – not in – the quarry itself. According to its Verified Complaint, the Township is currently challenging the designated beneficial use described under both the 2014 LAMP and the 2017 LAMP to ERAC. (Brief in Support of Proposed Order, at 12.)[1]

On July 22, 2016, RRD also applied to the OEPA to approve an Integrated Alternative Waste Management Plan (**"IAWMP"**). The IAWMP has not been approved by OEPA and is, again according to the Verified Complaint, being challenged by certain residents of the Township. (*Id.*, at ¶32); (Exhibit C: IAWMP application[2]). If issued, the IAWMP would regulate the blending of DWTM with native soils for the beneficial use as controlled fill material at RRD's property, including the quarry itself. (Exhibit C).

The Township alleges that RRD's operations on the property are in violation of state law and the Township's Zoning Resolution (**"Resolution"**). (Verified Complaint, *passim*). Based on these allegations, on February 23, 2017, the Township sought and received a Temporary Restraining Order prohibiting RRD's continued operation. The Court scheduled a hearing on the Township's request for a preliminary injunction for March 7, 2017. Because of the rapidly approaching hearing date, RRD requests that the Court accelerate its ruling on the instant Motion so that the parties have the Court's ruling prior to the hearing.

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[1] RRD has found no record of the Township's challenge to ERAC, but its allegation makes clear the Township already knows where its challenge should be lodged – ERAC – and that this Court is not the proper forum.

[2] The document attached hereto as Exhibit C is only the IAWMP application. There were additional attachments to this application amounting to over a thousand pages. Due to the size, RRD has only included the IAWMP application but can, upon request, furnish to the Court the additional attachments.

IV. LAW AND ARGUMENT

The Township's Verified Complaint challenges RRD's actions on two general bases: (1) RRD's operations are occurring under improper or inapplicable permits from the OEPA (Ver. Compl. ¶¶ 4, 7, and 14; 43) and (2) RRD's operations violate the Resolution (Ver. Compl. ¶¶ 26, 28, 30, 40, 41, 43, 51). As a corollary to the second argument, the Township more specifically claims RRD's operations constitute a nuisance. (Ver. Compl. ¶¶ 44 & 45.) However, the Township's claims should be dismissed for three basic reasons. One, the Court lacks subject matter jurisdiction to rule on the validity and applicability of permits issued by the OEPA or on alleged violations of such a permit. Exclusive original jurisdiction for such matters rests with ERAC. By asking the Court to stop RRD's permitted activities, the Township asks the Court to usurp the exclusive jurisdiction of ERAC. Two, the applicable section of the Resolution relied upon by the Township is preempted by statewide general law permitting beneficial reuse of DWTM. Three, the Township has failed to sufficiently plead facts upon which to base a claim of nuisance against RRD of the narrow sort available under Ohio law. For these reasons, all more fully discussed below, this action should be dismissed.

A. The Court Lacks Subject Matter Jurisdiction Over the Verified Complaint Because It Seeks Relief For Alleged Violations That Are Within The Exclusive, Original Jurisdiction Of ERAC.

The OEPA has exclusive responsibility for administering and enforcing Ohio's environmental laws, including those applicable to the beneficial use of DWTM. R.C. 3745.01. ERAC has exclusive, original jurisdiction to hear all appeals related to the actions of the OEPA, including adoptions, modifications, issuances, or revocations of any orders or permits and enforcement actions taken against thereto. *See* R.C. 3745.04; *see also State ex rel. Cordray v. Naypayer*, 11th Dist. Trumbull No, 2008-T-0102, 2009-Ohio-4620 (court held it lacked

jurisdiction to hear arguments based on the invalidity of the OEPA decisions as related to violations of environmental orders). Courts have consistently held that ERAC maintains exclusive, original jurisdiction over appeals from decisions of the OEPA. *See e.g., State ex rel. Maynard v. Whitfield,* 12 Ohio St.3d 49, 50, 465 N.E.2d 406 (1984); *Stark C&D Disposal, Inc. v. Bd. of Health Combined Gen. Health Dist.,* 10th Dist. Franklin No. 10AP-51 & 10AP-103, 2010-Ohio-4607, ¶30; *Bates v. GSC Principals*, 6th Dist. Lucas No. L-07-1185, 2008-Ohio-2211, ¶8. Thus, the Court lacks subject matter jurisdiction to address claims made by the Township which challenge the propriety of the OEPA's permit issuance, permit monitoring, and enforcement.

i. The Township Improperly Seeks Relief from this Court to Prohibit RRD's Operations Which It Alleges Are Improper Under the 2014 and 2017 LAMPs.

The Court lacks subject matter jurisdiction over challenges to the actions of the OEPA, including the OEPA's issuance of the 2014 and 2017 LAMPs and its determination of whether RRD is following its permit. *See Bates,* 2008-Ohio-2211. The Township's Verified Complaint is riddled with allegations that the OEPA's underlying issuance of the LAMPs were improper and its management of RRD's operations are inadequate. (Verified Complaint, at ¶¶7, 11, 14, 17, 27, 43). Specifically, the Township questions the OEPA's determination in the 2014 LAMP that utilizing DWTM to "make grade...and create vegetative growth" was a beneficial use. (*Id.*, at ¶7). In fact, the Township outright denies that the stated beneficial use is proper under Ohio law. (*Id.*). Furthermore, the Township alleges that OEPA issued the LAMPs to incorrect parties (*Id.*, at ¶¶7, 11); failed to monitor RRD's activities on the property for compliance with the 2017 LAMP (*Id.*, at ¶¶14, 17); failed to properly classify DWTM as "solid waste" (*Id.*, at ¶27); and improperly permitted RRD to release contaminants into the waters of the state (*Id.*, at ¶43). Such allegations

are blatant challenges to the OEPA's authority in issuing the permits and monitoring the activities undertaken pursuant to said permits; these arguments must be made to ERAC.

While the Township attempts to characterize its allegations in terms of its zoning authority by referring to the public health and safety, these references are ineffective in establishing jurisdiction because the State has the same interests. (*See e.g., id.*, at ¶¶17, 43); *see Bd. of Cty Comm'rs v. Columbus*, 26 Ohio St. 3d 179, 182, 497 N.E.2d 1112 (1986) ("It is fundamental that the protection and preservation of the public health is a prime governmental concern and thus a function of the state."). Not only is the OEPA responsible for public health and safety, the OEPA is specifically tasked by the legislature to "prevent and abate pollution of the environment for the protection and preservation of the health, safety, welfare, and property of the state." R.C. 3745.011(B).

The Township's Verified Complaint alleges that dangers to public health and safety exist as the result of the failure of the OEPA to properly perform its functions; predominantly, its duty to issue proper permits and monitor permitted uses for violations. Both the legislature and Ohio courts have explicitly placed this category of challenge – *i.e.*, the propriety of OEPA's actions – within the exclusive, original jurisdiction of ERAC. Ultimately, the Township's Verified Complaint amounts to an impermissible collateral attack on the OEPA's decisions under the guise of enforcing zoning regulations. The Township cannot independently prosecute the alleged violations by RRD of the 2014 and 2017 LAMPs (and disregard ERAC) because the claims raised in the Verified Complaint "do not fall within that narrow class of acts that are actionable in a court of common pleas." *Bates,* 2008-Ohio-2211, ¶21.

ii. The Township Has an Adequate Remedy at Law Through Which to Stay RRD's Operations During the Pendency of an Administrative Appeal.

Importantly, the Township has a remedy through ERAC. Typically, the filing of an appeal with ERAC will not stay the execution of the action being appealed. Ohio Adm. Code 3746-5-13(A). However, the Administrative Code explicitly provides that upon motion of a party, "[ERAC] may suspend or stay such execution pending immediate determination of the appeal..." *Id.* The availability of an administrative stay provides the Township with an adequate remedy at law such that the exercise of this Court's jurisdiction is unnecessary. *See State ex rel. Sierra Club v. Koncelik*, 10th Dist. Franklin No. 05-AP-643, 2005-Ohio-6477. As exclusive jurisdiction over "the lawfulness and reasonableness of the [OEPA's] actions" rests with ERAC, and the underlying administrative code provides an adequate remedy through which to stay RRD's operations pending initial review by ERAC, the Court should dismiss the Verified Complaint.[3]

That the Township is not currently a party to any actions before ERAC is of no import. Ohio Adm. Code 3746-5-04 specifically provides a procedure to allow a party to intervene in an ongoing appeal to ERAC. Furthermore, courts have affirmed that interested parties, independent of those involved with the underlying OEPA proceeding, have standing to initiate appeals before

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[3] The available remedies in ERAC also provide another reason for the Court to dissolve the Temporary Restraining Order and refrain from granting any further injunctive relief:

> Where an administrative agency has jurisdiction to make an order in a matter pending before it, and a right of appeal from such order . . . is provided by law to any person adversely affected thereby, *such person is not authorized to bring an independent action in equity to enjoin the carrying out of such order, where the grounds relied upon in seeking the injunction are such as could be fully litigated in the appeal authorized by law.*

Brooks v. Canfield, 34 Ohio App.2d 98, 108, 296 N.E.2d 290 (7th Dist.1972) (emphasis added).

ERAC. *See City of Garfield Hts ex rel. Kozelka v. City of Garfield Hts.*, 8th Dist. Cuyahoga No. 92511, 2009-Ohio-5009, ¶¶35-42. The existence of such standing (even if not utilized) requires that a party bring claims which fall under the jurisdiction of ERAC to that administrative body before seeking relief in the judicial system. *Id.* at ¶24; *see also Gray v. Willey Freightways*, 89 Ohio App.3d 355, 362, 624 N.E. 2d 755 (6th Dist. 1993) (appellate court affirmed dismissal for lack of subject matter jurisdiction over complaint for injunctive and declaratory relief due to failure to exhaust administrative remedies; the administrative decision was appealable to courts and thus, provided an adequate remedy at law). Accordingly, the Township has adequate remedies through an administrative appeal to ERAC by which to challenge the OEPA's action and thus, the Court lacks subject matter jurisdiction.

iii. The jurisdictional conflict is real, not hypothetical: The OEPA has directed RRD to complete work on the property that the TRO prohibits.

An actual conflict exists between the OEPA's exclusive jurisdiction and the Court's TRO. Defendants' currently face a Hobson's choice: violate an OEPA directive or violate the TRO. The fact Defendants face such a "choice" drives home the Court's lack of subject matter jurisdiction.

The conflicting orders are as follows. On February 23, 2017, the Court issued its TRO stating as follows:

> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the defendants and any affiliated company owned or controlled by the defendants or their principal shareholders, and all persons acting on behalf or in concert with defendants, *be enjoined and restrained from operating in Benton Township* until and unless they are in compliance with the Benton Township Zoning Resolution and the laws of the State of Ohio. This includes but is not limited to the digging of a borrow pit and/or constructing a farm pond, spreading, burying or mixing of waste, removing topsoil where such removal is a conditional use, changing the

> drainage of the property, placing any material into waters of the state and/or otherwise violating the zoning laws of Benton Township. (Emphasis added.)

(TRO at 1-2). Under the TRO, Defendants cannot operate in any way in Benton Township.

On February 27, 2017, the OEPA issued a Notice of Violation (**"NOV"**) requiring Defendants to operate on the property to address soil stabilization requirements, previously discussed with the OEPA and required under the terms of the National Pollutant Discharge Elimination System (**"NPDES"**) permit applicable to the property. (**Exhibit D**: Affidavit of John Taddonio, ¶¶ 3-4 and **Exhibit 1** thereto.) The NOV states:

> **Requested Action:** Stabilize all inactive areas per the above tables. The storm water pollution prevention plan (SWP3) for this site shall have instructions for winter stabilization. The areas of concern include the berms around the ponds where gullies and rills had formed, berms around the area of the former farmland, and any other area that remains dormant for more than 14 days. Areas that had been permanently seeded but do not have 70% or more permanent stabilization shall be temporarily stabilized until permanent stabilization can be utilized.
>
> The area of the former farmland on the southeast corner, the berms on the south side of the site bordering the former farmland, and any other area of the site that drains to the bedrock fissure on the south side of the site, needs to be graded and stabilized as soon as possible.

NOV at 2-3. The NOV further requires Defendants to "provide documentation to Ohio EPA of the actions taken and/or will be taken to resolve the [NOV]" with fourteen (14) days of receipt. If defendants fail to comply, they face "an administrative or civil penalty" from the OEPA. (NOV at 3.)

Defendants are being forced to violate one order or the other. (Exhibit D, ¶ 5.) On the one hand, the Court has "enjoined and restrained" Defendants "from operating in Benton Township." On the other hand, the OEPA's NOV directs Defendants to operate on in Benton

Township. Should Defendants (i) comply with the TRO, violate the NOV, and incur enforcement action by the OEPA or (ii) comply with the NOV, violate the TRO, and incur enforcement action by the Court? The very question illustrates why this entire matter lies outside the jurisdiction of this Court and rests with the OEPA and ERAC. The OEPA exercises jurisdiction over RRD's permitted operations and has the exclusive power and authority to direct RRD to take or not take the actions thereon. This Court's exercise of jurisdiction over the same subject matter creates an untenable conflict that cries out for dismissal.

The Township may respond that Defendants' alternative is to request permission from the Court to conduct the work required by the NOV. However, such a suggestion would only illustrate the same conflict. If the suggestion were followed, every directive, order, or NOV issued by the OEPA to Defendants would have to be reviewed by the Court. And, what if the Court declines such permission? The very notion makes the point: This Court lacks subject matter jurisdiction over this action and the Township's Verified Complaint should be dismissed.

B. The Court Further Lacks Subject Matter Jurisdiction and the Township Failed To State A Claim Upon Which Relief Can Be Granted Because The Township's Applicable Zoning Resolution is Preempted By State Statute.

i. Section 103.7 of the Resolution is the only section regulating DWTM in the Township.

The Resolution has only a single section purporting to regulate DWTM. Specifically, Section 103.7 of the Resolution states:

> The dumping and/or burying and/or spreading, in any manner of sewage and/or sewage sludge and/or industrial waste is fully prohibited in all thirteen (13) zoning classifications listed herein.

The terms "sludge," "sewage sludge," and "industrial waste" are not defined by the Resolution, but are terms defined by statewide law. R.C. 6111.01(C) specifically defines "industrial waste" as "any liquid, gaseous, or solid waste substance resulting from . . . the development, processing,

or recovery of any natural resource . . . ." More generally, R.C. Chapter 6111 governs "disposal of . . . industrial waste." The DWTM at issue here – spent lime from the City of Toledo's water supply treatment process – is regulated under R.C. Chapter 6111.

Notably, Section 103.7 of the Resolution is the *only* section of the Resolution to reference "industrial waste" in any way. As such, Section 103.7 of the Resolution is the *only* section of the Resolution applicable to the beneficial reuse of DWTM in the Township.[4]

The Ohio Supreme Court and the Sixth District Court of Appeals have repeatedly stated:

> 'zoning ordinances are in derogation of the common law. They deprive a property owner of uses of his land which he would otherwise be entitled and, therefore, when interpretation is necessary, such enactments are normally construed in favor of the property owner.'

Eckel v. Swanton Twp. Bd. of Trustees, 6th Dist. No. L-03-1289, 2004 Ohio 4855, ¶ 18, citing *Cash v. Brookshire United Methodist Church*, 61 Ohio App.3d 576, 579, 573 N.E.2d 692 (10th Dist. 1988); and *In re Appeal of University Circle, Inc.*, 56 Ohio St.2d 180, 383 N.E.2d 139 (1978). The Ohio Supreme Court has further stated:

> "Restrictions on the use of real property by ordinance, resolution or statute must be strictly construed, and *the scope of the restrictions cannot be extended to include limitations not clearly proscribed."*

Saunders v. Clark County Zoning Dept., 66 Ohio St.2d 259, 261, 421 N.E.2d 152 (1981) (emphasis added).

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[4] While the Township also alleges (i) violation of the pond permitting process set forth at Section 706 of the Resolution and (ii) "topsoil removal" without a conditional use permit, the Township's Verified Complaint asks the Court to stop RRD's entire permitted beneficial reuse project, not just digging a pond or removing topsoil. Moreover, the Township's allegations are so intertwined as to make separating them impossible. In any event, because the Township relies on these zoning provisions to prohibit the permitted operations of RRD, those provisions are also preempted here as a matter of law.

The cases cited above illustrate the strict construction of zoning regulations required under Ohio law. In *In re Appeal of University Circle, Inc.*, 56 Ohio St.2d 180, the landowner applied to the City of Cleveland for a building permit to build a parking lot which would be contrary to the Multi-Family classification for the property in question. The City denied the building permit because a variance was first required. The BZA later denied the variance and the landowner appealed. *Id.* at 180-81. The Supreme Court found that the City's zoning ordinance permitted hospitals in a multi-family district and allowed "accessory uses" including parking lots. The Supreme Court, reading the zoning ordinance strictly as required under Ohio law, found the provision relied on by the BZA to require a variance did not apply on its terms. *Id.* at 184-85.

Similarly, in *Cash v. Brookshire United Methodist Church* (1988), 61 Ohio App.3d 576, the plaintiff sought to enjoin a church from maintaining and operating a baseball field on its property. *Id.* at 577-78. The plaintiff argued the zoning ordinance permitted a "church," but not a baseball field. The zoning ordinance did not specifically prohibit a baseball field and did not define "church." *Id.* at 580-81. After considering what constituted a "church," the Court of Appeals held:

> Since zoning ordinances are to be construed in favor of the property owner, and in favor of the free use of property, we find that activities such as sponsoring a Little League baseball program on land owned by, and adjacent to, the Brookshire United Methodist Church are incidental to, and form a part of, the public worship program of appellant, and are permitted under the city zoning ordinances as a church use.

Id. at 582.

Lastly, in *Eckel v. Swanton Twp. Bd. of Trustees*, 6th Dist. No. L-03-1289, 2004 Ohio 4855, the landowner applied for a special use permit from Swanton Township to deepen an

existing pond on his property. The township denied the special use permit, the landowner appealed, and the trial court reversed the township's denial. The Court of Appeals affirmed stating the township's zoning ordinance permitted "[d]evelopment of natural resources, including the extraction of sand, gravel, fill dirt, topsoil and stone." Since the landowner intended to remove sand from the existing pond to deepen it, the Court of Appeals, strictly construing the zoning ordinance, found the use allowed. Notably, the Court of Appeals rejected the township's effort to define "natural resource" differently than it defined it in the zoning resolution.

Following the reasoning of the foregoing cases, because Section 103.7 is the only section of the Zoning Resolution referencing "industrial waste," it is necessarily the only section regulating it.

> [U]nder the general rule of statutory construction, *expressio unius est exclusio alterius*, 'the expression of one or more items of a class implies that those not identified are to be excluded.'"

State ex rel. Salim v. Ayed, 141 Ohio St.3d 129, 2014-Ohio-4736, 22 N.E.3d 1054, ¶ 21. As stated in *Waltco Truck Equip. Co. v. Tallmadge Bd. of Zoning Appeals*, 40 Ohio St.3d 41, 43, 531 N.E.2d 685 (1988):

> The General Assembly, in enacting R.C. 713.11, was surely aware that building permits are often granted by zoning inspectors. By using the specific term "refusal," the legislature has expressed its intent that the jurisdiction of the board be limited to hearing appeals from refusals of building permits. The rule of statutory construction is that an expression of one specific power implies the intent to exclude other powers (*expressio unius est exclusio alterius*).

The same analysis and result apply here. Having expressly regulated "industrial waste" (*i.e.*, DWTM) one way, the Township cannot now imply some other regulation. The Township's Resolution contains no regulation on the manner, means, or method by which industrial waste may be dumped, buried, or spread. Rather, it regulates "industrial waste" in only one way – it

bans it in every zoning classification available. It makes no provision for its allowance in any district either as a permitted or conditional use.[5] Having explicitly regulated it under Section 103.7, the Township cannot attempt to regulate it under tangential sections of the Resolution. As discussed below, the Township's absolute ban on industrial waste (including DWTM) is preempted leaving it with no regulation applicable to DWTM.

ii. Section 103.7 of the Zoning Resolution is preempted by R.C. Chapter 6111 and R.C. 519.21.

The Township requests relief on the allegation that RRD's operation violates Article 1, Section 103.7 of the Zoning Resolution which flatly prohibits "dumping and/or burying and/or spreading, in any manner of sewage and/or sewage sludge and/or industrial waste . . . in all thirteen (13) zoning classifications. . . ." (Verified Complaint, at ¶26). As explained above, this is the sole regulation applicable to DWTM. Such an absolute prohibition is preempted by state law and thus, unenforceable.

Revised Code Chapter 6111 specifically authorizes the OEPA to supervise "the disposal of . . . industrial wastes," including the means used for the collection, treatment, and disposal of such materials. R.C. 6111.46. Revised Code Chapter 6111 – the Chapter pursuant to which both the 2014 and 2017 LAMPs were issued – specifically defines the term "industrial waste" to include DWTM. *See* R.C. 6111.01(C). RRD's operation is specifically tailored to beneficial reuse of "industrial waste," in this case DWTM, as permitted under R.C. Chapter 6111. (Exhibits A & B);

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[5] The Resolution's allowance of "waste disposal" as a conditional use in an "M-3" Heavy Industrial district cannot apply since "industrial waste" is defined and regulated specifically and only in Section 103.7 of the Resolution. Moreover, the Resolution's definition of conditionally reusable "waste disposal" does not include "industrial waste." This makes sense given the Township's complete bar of "industrial waste." And again, it would be preempted even if it did apply.

see also Ohio Adm. Code 3745-599-01(A)(2) (permitting beneficial use of industrial waste from the treatment of a public water system's source water supply).

Fundamentally, the Township seeks to enforce a section of its Resolution (§103.7) that explicitly prohibits beneficial use of DWTM after the State has already permitted it. This is the gravamen of preemption. *See Canton v. Whitman*, 44 Ohio St.2d 62, 337 N.E.2d 766 (1975) paragraph two of the syllabus ("regulations adopted under the powers of local self-government...must yield to [conflicting] general laws of statewide scope and application..."); *Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) paragraph two of the syllabus (a conflict exists when "the ordinance permits or licenses that which the statute forbids and prohibits and vice versa").

The Sixth District has previously ruled on the unenforceability of local zoning regulations that conflict with the regulatory scheme established in R.C. Chapter 6111. In *Perry v. Providence Township*, 63 Ohio App.3d 377, 578 N.E.2d 886 (6th Dist. 1991), Providence Township ought to enforce a remarkably similar zoning regulation, which stated:

> The dumping and/or spreading of sewage sludge, industrial sludge, and any by-product of the treatment of sewage or industrial waste is prohibited within the township.

In a declaratory action, a company who applied sludge to land, deposited sludge in landfills, and deposited sludge in land reclamation projects challenged the enforceability of Providence Township's zoning regulation. The court held the regulation was preempted by R.C. Chapter 6111 and an unauthorized exercise of power under the limited zoning grant bestowed on townships by the state by R.C. 519.21. *Id.*

The Court explained:

> In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.
>
> The issue before this court is whether Section 7.13.1, which bans the land application of sludge in Providence Township, forbids or prohibits that which the state permits under R.C. 6111.46 and Ohio Adm. Code 3745-31-02(B). Appellants contend that neither the Revised Code section nor the Ohio Administrative Code section explicitly *permit* the land application of sludge, but that they merely *regulate* it in the event a political subdivision chooses to allow the land application of sludge at all. We do not read R.C. 6111.46 and Ohio Adm. Code 3745-31-02(B) so narrowly.
>
> R.C. 6111.46, through Ohio Adm. Code 3745-31-02(B), implicitly permits the land application of sludge so long as the Ohio Administrative Code requirements are met. Thus, Section 7.13.1, which totally bans the land application of sludge, forbids what the state permits and is therefore in direct conflict with state law.

Id. at 380 (emphasis original). *See also id.* at 381 ("A uniform statewide approach . . . is preferable to piecemeal local regulation.") The instant case merits the same conclusion.

Just like the Sixth District in *Perry*, this Court faces the same basic question: does Section 103.7 of the Resolution prohibit that which R.C. Chapter 6111 permits? The answer is an unqualified yes. Section 6111.46 grants the OEPA general supervisory power, including the power to regulate, "the disposal of . . . industrial wastes." The Ohio Administrative Code further allows the beneficial use of industrial wastes, particularly DWTM from the treatment of a public water system's source water supply. Ohio Adm. Code 3745-599-01(A)(2). Under the regulatory scheme, a beneficial use "may include but is not limited to use for agronomic benefit;[6] as a replacement of a raw material; as a soil amendment, fertilizer, or structural fill; or as fill." Ohio Adm. Code 3745-599-02(B)(1).

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[6] Agronomic benefit is defined as "the promotion or enhancement of plant growth and includes but is not limited to increases in soil fertility and moisture retention." OAC §3745-599-02(A)(1).

Accordingly, R.C. 6111.46 and Ohio Adm. Code 3745-599 *et seq.* "implicitly permits the [beneficial use of DWTM] so long as, the Ohio Administrative Code requirements are met." *Perry*, 63 Ohio App.3d at 380. Yet, the Resolution prohibits the dumping, burying or spreading of DWTM anywhere in the Township. Such a local prohibition conflicts squarely with the OEPA's identified beneficial uses to which industrial waste may be put. Since the Township's Resolution is in direct conflict with the statute and regulations granting to the OEPA authority to permit the beneficial use of industrial wastes, it is preempted and unenforceable. *See also Osnaburg Twp. Zoning Inspector v. Eslich Envtl., Inc.*, 2008-Ohio-6671 (5th Dist. 2008) (local zoning regulation which prohibited certain actions in residential districts preempted by R.C. Ch. 3714's "comprehensive schemes for regulating the disposal of construction and demolition debris, solid wastes and hazardous wastes").

The Court of Appeals in *Perry* also found that Providence Township's zoning resolution conflicted with R.C. 519.21[7] because it regulated the land application of sludge, a legitimate agricultural fertilizer. *Perry*, 63 Ohio App.3d at 381-82. The Court of Appeals made clear it was irrelevant whether the plaintiff actually utilized the sludge for agricultural purposes; rather, because the zoning resolution banned *all* applications, including agricultural applications, it was improper under R.C. 519.21. *Id.* Analogous to the sludge in *Perry*, the DWTM here is lime sludge – material resulting from the treatment of a water supply for drinking, Ohio Adm. Code 3745-27-03(A)(8)(b) – and has a legitimate agricultural use as regulated by the OEPA and Ohio Department of Agriculture. *See* R.C. 905.51(A) and (K) (stating land application of lime sludge is governed by the OEPA); Ohio Adm. Code 3745-599-01(A)(2) (allowing beneficial use of materials used to treat

[7] R.C. 519.21 bars a township from "prohibiting the use of any land for agricultural purposes."

public water supply); Ohio Adm. Code 3745-599-02(B)(1) (a beneficial use includes land application).

In sum, following the authority of *Perry*, Section 103.7 which prohibits *all* applications of industrial waste, including DWTM, everywhere in the Township, is preempted. Such a broad prohibition is in direct conflict with R.C. Chapter 6111, which explicitly authorizes the disposal of industrial waste if done in compliance with appropriate statutes and regulations. Furthermore, also following *Perry*, the Township has impermissibly banned all uses of industrial waste, even for agricultural purposes. Under *Perry*, Section 103.7 of the Resolution is void and unenforceable and cannot be the basis for any claim of relief by the Township.[8]

C. The Township Has Failed To Sufficiently Plead Facts Upon Which To Establish That RRD's Operation Is A Nuisance.

The legislature has carved out one – and only one – exception to the general prohibition on local regulation of sludge and waste disposal; abatement of a narrowly-defined type of nuisance. *See Atwater Twp. Trustees v. BFI Willowcreek Landfill*, 67 Ohio St.3d 293, 617 N.E.2d 1089 (1993) (affirming the township's right to regulate against nuisances was not preempted by R.C. Chapter 3734). Under the common law, enforcement of pollution prevention was achieved through a suit in nuisance. Revised Code Chapter 6111 has retained that common-law right of action and specifically excludes from preemption actions to abate a nuisance. *See* R.C. 6111.08. However, the

[8] Similarly, the Township also relies on Section 103.8 of the Resolution, which prohibits "landfills" throughout the Township. RRD does not operate a "landfill"; hence, this provision does not apply. However, even if it did, such a township-wide prohibition on landfills is also preempted since statewide general law regulates the siting and operation of landfills. *See Clermont Environmental Reclamation Co. v. Wiederhold*, 2 Ohio St.3d 44, 442 N.E.2d 1278 (1982) (holding a local regulation which prohibited the existence of private landfills within the township to be preempted); *see also Harvard Refuse Inc. v. Cleveland*, 18 Ohio App.3d 80, 481 N.E.2d 656 (8th Dist. 1984) (Cleveland ordinances related to the review and licensing of solid waste facility were invalid in the face of the general uniform statutory scheme). Again, the Township cannot prohibit what the state permits.

right to regulate "exists *only* in the narrow areas of nuisance and pollution prevention and abatement." *Bates v. GSC Principals*, 6th Dist. Lucas No. L-07-1185, 2008-Ohio-2211, ¶18 (emphasis added).

A nuisance is a "wrongful invasion of a legal right or interest." *Banford v. Aldrich Chem. Co.*, 126 Ohio St. 3d 210, 213, 2010-Ohio-2470, 932 N.E.2d 313. A nuisance can be either public or private; a public nuisance is "an unreasonable interference with a right common to the general public," including, among others, "with public health, safety, peace, comfort, or convenience." *Brown v. Scioto Cty. Bd. of Commrs.*, 87 Ohio App. 3d 704, 712, 622 N.E.2d 1153, 1158 (4th Dist. 1993). Further, a nuisance may either be qualified or absolute. *Hager v. Waste Technologies Indus.*, 7th Dist. Columbiana No. 2000-CO-45, 2002-Ohio-3466, ¶ 72.

An absolute nuisance is "based upon either intentional conduct or abnormally dangerous conditions, and as such, a rule of absolute liability applies." *Hager,* 2002-Ohio-3466 at ¶ 71. But, RRD's operation cannot be deemed an absolute nuisance under the law because a comprehensive set of legislative acts and administrative regulations explicitly govern RRD's conduct. *See Bates,* 2008-Ohio-2211, ¶18; *see also Brown,* 87 Ohio App.3d 704, 713 ("Since pollution control operates under the sanction of law, it cannot be a common-law public nuisance."). As the First District Court of Appeals explained in the context of landfill operations: "[o]nce an operator becomes licensed by the state, we think it fair to say in law that part of the quid pro quo for the submission to such exacting regulatory oversight is the operator's insulation from liability under a theory of strict liability." *State ex rel. Schoener v. Bd. of Cty. Comm'rs*, 84 Ohio App.3d 794, 800, 619 N.E.2d 2 (1st Dist. 1992).

This position is borne out by the legislative enactments of both the State and the Township which both place limitations on what can be deemed a nuisance. Sections 6111.04(A)(1-2)

prohibit as a public nuisance placing industrial where it causes pollution to the waters of the state. However, the statute continues on to exempt from the definition of public nuisance those who act as such while "hold[ing] a valid, unexpired permit, or renewal of a permit, governing the causing or placement [of industrial waste]." R.C. 6111.04(A).

The Township Zoning Resolution contains an analogous provision. Section 800.1 precludes uses that are "dangerous, injurious, noxious, or otherwise objectionable...so as to adversely affect the surrounding area or adjoining premises"; essentially, those uses deemed nuisances. Yet, just like R.C. 6111.04(A), Section 800.1 provides an exception for nuisance liability where the conduct is in conformity with the "acceptable limits as established by the Federal Government or appropriate State statutes."

Thus, even where actions would be a common-law (or statutory) nuisance, "conduct which is fully authorized by statute or administrative regulation is not an actionable tort." *Brown,* 87 Ohio App.3d at 713. Hence, "a pollution control facility [operating] under the sanction of law . . . cannot be a public nuisance." *Id.*; *see also Hager,* 2002-Ohio-3466, ¶74 ("[Hazardous waste incineration plant's] mere existence or operation could not qualify it as a common law public nuisance.") Here, RRD's operation is completely sanctioned by the OEPA – by way of the 2014 LAMP and 2017 LAMP – and cannot be an absolute nuisance.

Based on Ohio law, in order for a duly licensed and regulated DWTM permittee, such as RRD, to be held liable for maintaining a nuisance, the Township must allege a qualified nuisance. *See Id.* at ¶128. A qualified nuisance is established through a negligence inquiry. *Hager*, 2002-Ohio-3466 at ¶71. It "consists of anything lawfully but so negligently or carelessly done or permitted as to create a potential and unreasonable risk of harm[ ] which, in due course, results in injury to another." *Id.* citing *Brown*, 87 Ohio App.3d at 713. Critically, to sustain a claim for

qualified nuisance, a party must prove negligent acts *independent of* the actions or inactions permitted by the OEPA. As stated in *Bates*:

> [O]ur review of the issues raised by appellants in conjunction with the law set forth above leads us to believe that all of appellants' complaints concerning appellees' purported "violations," which have necessarily been reviewed by the director in determining whether to allow the modification of Envirosafe's permit and the renewal of its permit, and the decision of the Ohio Attorney General, are before the appropriate legal forum [ERAC]. In other words, *the "violations" raised by appellants do not fall within that narrow class of acts that are actionable in a court of common pleas.*

Bates, supra, ¶ 21 (emphasis added). The failure to sufficiently plead a qualified nuisance by alleging violations within the purview of ERAC requires dismissal for lack of subject matter jurisdiction under Civ.R. 12(B)(1). *See id.* ¶¶21 (affirming the trial court's dismissal for lack of subject matter jurisdiction).

The Verified Complaint contains no allegation of negligence, let alone negligent acts separate and apart from RRD's operations under the 2014 LAMP and 2017 LAMP. The Verified Complaint, rather, complains that RRD's permitted operations are, themselves, a nuisance. (*See* Ver. Compl. ¶¶ 44 & 45.) Under Ohio law, such a claim cannot lie. *See e.g., Bates, supra*; *Hager, supra*; *Adams v. Pitorak & Coenen Invs. Ltd.*, 11th Dist. Geauga No. 2011-G-3019, 2012-Ohio-3015 (claim of qualified nuisance on the basis of re-grading and excavation could not lie because property passed all relevant inspections and complied with state and local environmental protection policies). Thus, the Township has also failed to state a claim upon which relief can be granted under Civil Rule 12(B)(6), again requiring dismissal.

In short, the Township has not – and cannot – sufficiently plead a claim for qualified nuisance over which the Court has subject matter jurisdiction. Accordingly, the Township's

Verified Complaint should again be dismissed pursuant to Civ. R. 12(B)(1) and/or Civ. R.12(B)(6).

V. CONCLUSION

For the foregoing reasons, RRD requests that the Court dismiss the Verified Complaint pursuant to Civil Rule 12(B)(1) and Civil Rule 12(B)(6) and dissolve the Temporary Restraining Order pursuant to Civil Rule 65(A).

Respectfully submitted,

EASTMAN & SMITH LTD.

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Attorneys for Defendant Rocky Ridge Development, LLC

PROOF OF SERVICE

This is to certify that a copy of the foregoing ***Motion to Dismiss Pursuant to Civ.R. 12(B)(1) and 12(B)(6) and to Dissolve Temporary Restraining Order Pursuant to Civ.R. 65(A) and Memorandum in Support Thereof*** has been sent via email this 2nd day of March, 2017, to Robert B. Casarona, Esq. (cas@casaronalaw.com), Casarona Legal Services, LLC, The Falls Building, 57 East Washington Street, Cleveland, Ohio 44022, and to James Vaneerten, Esq. (prosecutor@co.ottawa.oh.us), Ottawa County Prosecuting Attorney, Ottawa County Courthouse, 315 Madison Street, Suite 205, Port Clinton, Ohio 43452, attorneys for plaintiff.

An Attorney for Defendant Rocky Ridge Development, LLC

OhioEPA

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

NOV 13 2014

Mr. Scott Stansley
Stansley Industries, Inc.
3793 Silica Rd.
Sylvania, OH 43560

Re: Stansley Industries, Inc.
Permit – Short Term
Approval
Beneficial Use
Lucas County
BENU020621

Subject: Stansley Industries, Inc.
LAMP Permit Approval
Beneficial Use of Lime Residuals as General Fill

Effective Date: November 13, 2014

Expiration Date: November 12, 2019

Dear Mr. Stansley:

The Ohio Environmental Protection Agency (Ohio EPA) has reviewed the Land Application Management Plan (LAMP) permit application submitted on August 15, 2014 by Stansley Industries, Inc. (Stansley) at the request of City of Toledo, Collins Water Treatment Facility, pursuant to Chapter 6111 of the Ohio Revised Code (ORC) for the proposed beneficial use of lime residuals in a soil blend as general fill. The submitted LAMP permit application proposes to beneficially use lime residuals as a material to blend with soil for the purpose of increasing elevation and improving drainage.

Pursuant to the authority of the Director under ORC Chapter 6111, this LAMP permit for beneficial use of lime residuals as general fill is approved subject to compliance with all conditions below.

This permit authorizes Stansley to beneficially use lime residuals in a soil blend for general fill in accordance with the LAMP permit application submitted on August 15, 2014. All other beneficial uses must be separately approved by Ohio EPA.

Conditions

1. The Director, or his authorized representative(s), may enter upon the premises of any Stansley properties taking lime residuals for soil blending, at any reasonable time, for the purpose of conducting inspections, collecting samples of soil blends, conducting tests, or examining records or reports pertaining to the soil blending process.

2. Stansley shall use the following blending ratios for soil blends used for general fill: not more than 35% lime residuals with not less than 65% soil.

3. Issuance of this permit does not relieve Stansley of the duty to comply with all applicable federal, state, and local laws, ordinances, and regulations, except as specifically exempted herein.

4. Stansley shall collect and analyze at least one sample per year of lime residuals for beneficial use and shall collect and analyze additional samples if there are substantial changes in the generation process or the raw materials used. For the purposes of this permit, a substantial change in the raw materials is a change which results in higher levels of the constituents in the table in Condition 5 or additional constituents.

   a. The samples collected shall be representative of the approved materials beneficially used for the calendar year.

   b. Stansley shall have the sample(s) analyzed for the constituents listed in the table in Condition 5.

   c. The reported detection limit for the analysis shall be below the limit specified for each constituent in the table in Condition 5.

   d. Stansley shall employ analytical methods that generate constituent results in units consistent with the units in the table in Condition 5.

5. At a minimum, the lime residuals intended for beneficial use shall be analyzed for the constituents specified in the following table. Stansley shall not designate, make available, or distribute for beneficial use any lime residuals that exceed any constituent limit specified in the following table.

Constituents	Total (mg/kg)*
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	100
Zinc (Zn)	2800

* - dry weight basis

6. Ohio EPA reserves the right to add constituents to the table in Condition 5 as it deems necessary.

7. The following shall be maintained by Stansley for a minimum of five years after the completion of the beneficial use of lime residuals authorized by this permit and made available to Ohio EPA upon request:

   a. Records of the annual volume of lime residuals that are beneficially used;

   b. A sampling plan detailing the sampling and analysis as required by Conditions 4 and 5;

   c. All laboratory reports of all analyses of lime residuals.

8. Any records required to be maintained in accordance with Condition 7 shall be provided to the Director upon request.

9. Storage and land application of the lime residuals shall not create a nuisance and shall not adversely affect public safety or health or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that storage or blending of lime residuals is a threat to human health or the environment, then permission to use this material may be revoked upon written notification from the Director. Immediately upon the effective date of any such revocation, Stansley shall cease land application of lime residuals.

10. Stansley shall not cause pollution or cause any lime residuals to cause pollution to any waters of the state and shall only discharge to waters of the state in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state shall be reported to Ohio EPA by calling 1 (800) 282-9378 within 2 hours of discovery.

11. Stansley shall not place lime residuals or the soil blend authorized herein into any waters of the United States, including wetlands, subject to regulation under Sections 401 and/or 404 of the Federal Clean Water Act, or in isolated wetlands subject to regulation under ORC Sections 3745.113 and 6111.02 through 6111.029, without first obtaining any required authorizations from the U.S. Army Corps of Engineers and/or Ohio EPA.

12. The Director shall be notified in writing within seven days if Stansley discovers noncompliance with this LAMP permit.

13. The Director may add, delete, or change any conditions to this LAMP permit to protect human health or the environment

14. Each year, by January 31st, Stansley shall submit a report regarding the beneficial use of the lime residuals for the previous calendar year. This annual report shall include the total amount, in tons, of lime residuals beneficially used and analytical results for any analyses performed.

15. The annual report shall be sent to the following address:

    Ohio EPA - DMWM
    Authorizing Actions and Engineering Unit
    P.O. Box 1049
    Columbus, OH 43216-1049

16. In the annual report, Stansley shall include the following annual certification statement. The certification statement shall be printed out and signed beginning one year after the effective date of this approval and annually thereafter:

    "I certify, under penalty of law, that the information used to determine compliance with the requirements contained in Chapter 6111. of the Ohio Revised Code, and all rules adopted thereunder, for the period beginning (insert date of last certification statement) and ending (insert current certification statement date) was prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

17. This permit to beneficially use lime residuals in a soil blend as general fill shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use lime residuals in a soil blend beyond the above date of expiration, Stansley shall submit such information and forms as are required by Ohio EPA not later than 180 days prior to the above date of expiration.

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 which the Commission, in its discretion, may reduce 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:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

Sincerely,

Craig W. Butler
Director

DH

Attachment: LAMP Permit

cc: Tim Murphy, City of Toledo, Dept. of Utilities
Ryan Gierhart, DSW, NWDO
Elizabeth Wick, DSW, NWDO
Mike Reiser, DMWM, NWDO

Permit-to-Install/Plan Approval Application

FOR AGENCY USE ONLY		
Date Received: / /	Application/Revenue ID:	Organization ID:
Document ID:	Place ID:	Check ID:
Check Date: / /	Check Number:	Check Amount:

1. **Project Name:** City of Toledo, Department of Public Utilities, Division of Water Treatment, Spent Lime Disposal

2. Applicant (see note after signature)

Name: Stansley Industries, Inc.
Mailing Address: 3793 Silica Road
City: Sylvania State: Ohio Zip: 43560
Contact Name: Charles Stansley
Title: President
Phone: 419-841-6960 Fax: 419-843-7939 E-mail : cstansley@stansleyindustries.com

3. Application/Plans Prepared by:

Name: Scott Stansley
Mailing Address: 3793 Silica Road
City: Sylvania State: Ohio Zip: 43560
Contact Name: Scott Stansley
Title: Project Manager
Phone: 419-841-6960 Fax: 419-843-7939 E-mail : sstansley@etransferservices.com

4. Billing Address (if different than Applicant)

Name:
Mailing Address:
City: State: Zip:
Contact Name:
Title:
Phone: ( ) - Fax: ( ) - E-mail :

APPROVED
OHIO ENVIRONMENTAL PROTECTION AGENCY
NOV 13 2014
AS EVIDENCED BY COPY OF LETTER OF APPROVAL HERETO ATTACHED

5. Future Owner (if different than Applicant)

Name:
Mailing Address:
City: State: Zip:
Contact Name:
Title:
Phone: ( ) - Fax: ( ) - E-mail :

6. Project Location

Street Address or Location Description: 600 Collins Park, Toledo, Ohio

County: Lucas Township:

Municipality: City of Toledo Latitude: Longitude:

Method of Determination:

7. Brief Project Description: ** See attached narrative plan **

8. Will one or more acres be disturbed during construction of this project? ☒ Yes ☐ No

If Yes, enter the date the NOI for coverage under the construction storm water NPDES permit was submitted: / / and the date coverage was granted: / /

9. Will wetlands be disturbed during construction of this project? ☐ Yes ☒ No

If Yes, enter the date the 401/404 permit application was submitted: / /

10 a. Is this application part of a combined permit-to-install application? (for example air + water) ☐ Yes ☒ No

b. Has an application for a Class V injection well permit been submitted? ☐ Yes ☐ No ☒ N/A

If Yes, date submitted: / /

11. Compliance Status

a. Will this project connect to a collection/treatment system that has a NPDES permit? ☐ Yes ☒ No

If Yes, list federal and state permit numbers:

OH

b. Is this application filed in compliance with findings and orders, a consent decree, and/or NPDES permit schedule? ☐ Yes ☐ No

If Yes, effective date of the document containing the schedule: / /

12. Compliance with 208 plan

Does the project conform to the 208/201 plan for the area? ☐ Yes ☐ No ☒ N/A

If Yes, has the engineer submitted supporting documentation? ☐ Yes ☐ No

13. Designated Ohio Wild, Scenic, & Recreational Rivers

Is this project located within 1000 feet of a designated wild, scenic, and recreational river? ☐ Yes ☒ No

See http://ohiodnr.com/?TabId=985 for additional information

14. Estimated Project Schedule

Beginning construction date: 07/15/2014 Ending construction date: / / Beginning operation date: / /

15. Project Cost

*Installation/Construction Cost: $ 5000.00 (Mark one): ☐ Actual ☐ Bid ☒ Estimate

Annual Operation/Maintenance Cost (if applicable - this project only): $

Are Water Pollution Control Loan Funds going to be used for this project? ☐ Yes ☒ No

If No, Funding Source:

**This is costs of the treatment/dispersal/collection system that will serve the project*

16. Attachments

The following are included in this application package (check appropriate box(es) and indicate how many copies of each are provided):

☐ Detail Plans		☐ Management Plan	
☐ Soil Evaluation Form		☐ Engineering Report	
☐ Hydrogeologic Site Investigation Report		☒ Engineering Specifications	TTL - attached
☐ Site Evaluation Form		☐ Sewer Authority Letter	
☒ Other (describe):	Analysis - attached	☐ Antidegradation Addendum	
☒ Narrative Plans - attached			

17. Form B / C Submission (check all that apply)

- ☐ Sewer and Pump Station Construction – Form B1
- ☐ Onsite Sewage Treatment Systems – Form B2
- ☐ Wastewater Treatment Plants Less Than 100,000 GPD – Form B3
- ☐ Wastewater Treatment Plants Greater Than or Equal to 100,000 GPD and all Pond Systems – Form B4
- ☐ Industrial Direct Discharge Facility – Form B5
- ☐ Industrial Indirect Discharge Facility – Form B6
- ☐ Underground Storage Tank Remediation – Form B7
- ☐ Holding Tanks – Form B8
- ☐ Industrial Impoundment Ponds – Form B9
- ☒ Land Application Management Plan for Sludge or Waste other than Treated Sewage – Form C1
- ☐ Treated Sewage Land Application Management Plan – Form C2
- ☐ Sewage Holding Tank Management Plan – Form C3

18. Fee Calculations

Permit-to-install (maximum total fee $15,100)	
a. Application fee:	$ 100.00
b. Plan review fee:	$ 100.00
c. Plan review fee (installation/construction cost x .0065):	$
d. Total Fee (a + b + c):	$
Sludge Management Plan Approval*	
a. Application fee:	$ 100.00
b. Plan review fee:	$ 100.00
c. Total fee (a + b):	$ 200.00

** No separate fee is needed for land application*

19. Antidegradation

Is this project subject to the Antidegradation Rule (OAC 3745-1-05)? ☐ Yes ☒ No

If Yes, an antidegradation addendum must be submitted (Note: It applies even if an exclusion and/or waiver is met)

If No, check all that apply:

- ☐ Application with no direct surface water discharge (Projects that do not meet the applicability section of 3745-1-05 (B)1, i.e., onsite sewage treatment systems, sanitary sewer extensions, indirect discharger to PDTW, etc.).
- ☐ Renewal NPDES application or PTI application with no requested increase in loading of currently permitted pollutants.
- ☐ Narrative Plans (Examples: Land Application, General Plans, etc.)

20. Submittals

To be considered complete, this application must include the following unless otherwise directed by Ohio EPA:

- ☐ Four copies of the detail plans including profile and plan views of all sewers (shown on the same sheet), existing (as applicable) and proposed pump station facilities, incorporating all of the details outlined in Section 20.1, 20.2 and 20.3 of *Recommended Standards for Wastewater Facilities*.
- ☐ Two copies of complete technical specifications.
- ☐ Two copies of the Permit-to-Install Application including Form A, pertinent B & C form(s), and the antidegradation addendum *(if applicable)*
- ☐ Fee check payable to "Treasurer, State of Ohio."

21. Signature of the Applicant (see Ohio Administrative Code 3745-42-03)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and that all the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are substantial penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Typed name: Charles Stansley Title: President

Signature: Date: 08/19/2014

NOTE (Who Must Sign):
The person signing as AApplicant@ is not the applicant=s engineer or architect or any other person submitting the Permit-to-Install Application on behalf of the owner. The AApplicant@ should be owner of the facility, business, corporation, company, etc. or the legal responsibly entity. It is not the engineer who prepared the plans.

APPROVED
OHIO ENVIRONMENTAL PROTECTION AGENCY
NOV 13 2014
AS EVIDENCED BY COPY OF
LETTER OF APPROVAL
HERETO ATTACHED

ENTERED DIRECTOR'S JOURNAL

Ohio Environmental Protection Agency

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

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EXHIBIT
tabbies B

February 14, 2017

Mr. Scott Stansley
Mr. Charles Stansley
Stansley Industries, Inc.
3793 Silica Rd.
Sylvania, OH 43560

Mr. John Taddonio
Rocky Ridge Development LLC
3793 Silica Rd.
Sylvania, Ohio 43560

Re: Stansley Industries, Inc.
Permit - Short Term
Approval
Beneficial Use
Lucas County
BENU020621

Subject: Stansley Industries, Inc. and Rocky Ridge Development LLC Modified LAMP Permit Approval for Beneficial Use of DWTM Blend as General Fill

Effective Date: FEBRUARY 14, 2017

Expiration Date: November 12, 2019

Dear Mr. Stansley and Mr. Taddonio:

The Director of the Ohio Environmental Protection Agency issues this Land Application Management Plan ("LAMP") permit to modify the LAMP permit issued to Stansley Industries Inc. on November 13, 2014 ("2014 LAMP Permit"), to amend conditions and to include Rocky Ridge Development LLC as a permittee, to protect human health or the environment.

Terms

1. The Director of the Ohio Environmental Protection Agency (Ohio EPA) has determined that it is necessary to add, delete and change conditions to the 2014 LAMP permit in accordance with condition no. 13 of the 2014 LAMP permit for the proposed beneficial use of drinking water treatment material (DWTM) in a soil blend as general fill, to protect human health or the environment.

2. Drinking water treatment material (DWTM) is defined for purposes of this LAMP permit as follows: "DWTM generated from the City of Toledo, Collins Water Treatment Facility".

3. Drinking water treatment material blend (DWTM blend) is defined as a homogeneous mixture of a ratio of not more than 35% DWTM with not less than 65% soil. A homogeneous mixture is defined as a mixture which has the same uniform appearance and composition throughout.

4. Pursuant to the authority of the Director under ORC Chapter 6111, the modified LAMP permit for beneficial use of DWTM as general fill is approved subject to compliance with all conditions below.

Conditions

1. This LAMP permit is issued to modify and supersede the November 13, 2014 LAMP permit, pursuant to condition no. 13 of the 2014 LAMP permit, to clarify and amend conditions to include Stansley Industries Inc. or Rocky Ridge Development LLC as a LAMP permittee, and protect human health or the environment. This LAMP permit and the conditions specified herein shall be binding upon Stansley Industries, Inc. [hereinafter "Stansley"] and Rocky Ridge Development, LLC [hereinafter "Rocky Ridge"], and their respective agents and successors in interest.

2. This LAMP permit authorizes Stansley or Rocky Ridge to beneficially use DWTM in a soil blend for general fill to increase elevation and improve drainage in existing low lying areas, in accordance with the LAMP permit application submitted on August 15, 2014, and with the conditions contained herein on the Rocky Ridge Property (the "Property") located at 14591 W Toussaint North and 3017 North S.R. 590, Benton Township, Ohio, Ottawa County.

3. Prior to relying upon this LAMP permit for the beneficial use of DWTM blend on any other property than the Property described in condition no. 2 above, Stansley or Rocky Ridge shall notify Ohio EPA in writing, and shall demonstrate to Ohio EPA's satisfaction that the beneficial use of DWTM blend on such other property is capable of satisfying the conditions, siting criteria and isolation distances in this LAMP permit, and obtain written concurrence from Ohio EPA for the storage of DWTM, and for mixing and beneficial use of DWTM blend to increase elevation and improve drainage in existing low lying areas on such Property. Ohio EPA may require the installation of wells in specific locations on such property and ground water monitoring to determine impacts to ground water as a condition to Ohio EPA's written concurrence with any demonstration made pursuant to this condition in lieu of condition no. 21. Upon Ohio EPA's written concurrence with such demonstration required by this LAMP permit, the conditions within this LAMP permit shall apply to such property, and Ohio EPA's concurrence shall be deemed to be incorporated in and made an enforceable part of this LAMP permit.

4. Prior to storing or mixing DWTM, or beneficially using DWTM blend at a location other than the Rocky Ridge property, in addition to obtaining concurrence under condition no. 3, Stansley or Rocky Ridge shall provide a copy of this LAMP permit to the owner of the property where the DWTM will be stored or mixed or where the DWTM blend will be beneficially used; and, Stansley or Rocky Ridge shall obtain written consent from the owner of the property to store, mix or beneficially use DWTM blend on such property, to install wells on such property, and to take any actions necessary to comply with this LAMP permit.

5. Stansley and Rocky Ridge shall not perform excavation and fillling in areas excavated for the purpose of creating low lying areas to fill with DWTM or DWTM blend pursuant to this LAMP permit, including areas where soils are excavated for purposes of blending in accordance with this LAMP permit. Only DWTM generated from the City of Toledo, Collins Water Treatment Facility is eligible for beneficial use under this Permit. All DWTM generated from other sources and all other beneficial uses must be separately approved by Ohio EPA.

6. The Director, or his authorized representative(s), may enter upon the premises of any Stansley or Rocky Ridge properties, the Property described in condition no. 2, or any property receiving DWTM for soil blending in accordance with this LAMP permit, at any reasonable time, for the purpose of conducting inspections, collecting samples of DWTM to analyze the material under the paint filter test, Method 9095B, collecting samples of DWTM blends, including from the area where the DWTM blend has been placed for beneficial use to analyze whether the material meets the homogeneous mixture of a ratio of not more than 35% DWTM with not less than 65% soil, for conducting tests, or examining records or reports pertaining to the soil blending process.

7. Prior to mixing with soil, Stansley or Rocky Ridge shall analyze at least one sample of every 1,200 cubic yards in accordance with the paint filter liquids test, as determined by results obtained from conducting method 9095B in SW-846, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," which is fully incorporated herein as Attachment 1. If the sample does not pass the paint filter liquids test, Stansley or Rocky Ridge shall dry the 1,200 cubic yards, resample, and repeat the process as necessary, prior to mixing with soil. Stansley or Rocky Ridge shall ensure that all DWTM is dried such that it is capable of passing the paint filter liquids test Method 9095B prior to mixing with soil. Rocky Ridge shall maintain a written log to document sampling and analysis of every 1,200 cubic yards of DWTM, and resampling if necessary, and make such log available to Ohio EPA upon request.

8. Stansley or Rocky Ridge shall mix not more than 35% DWTM, which satisfies the requirement of condition No. 7, with not less than 65% soil prior to beneficial use and prior to final placement as a fill to increase elevation and improve drainage. Stansley or Rocky Ridge shall establish protocols for sampling and analyzing the DWTM blend prior to its beneficial use as a fill to increase elevation and improve drainage, in order to evaluate and demonstrate that the final DWTM blend meets the homogeneous mixture of not more than 35% DWTM and not less than 65% soil blend criterion of this LAMP permit.

9. Stansley or Rocky Ridge shall identify a separate designated mixing area to be used for drying (as necessary) the DWTM, and mixing the not more than 35% DWTM with not less than 65% soils, which shall be separate from the area of final placement of DWTM Blend. Stansley or Rocky Ridge shall provide prior notice on a plan view drawing to Ohio EPA of a separate designated mixing area for any mixing of DWTM with soil in accordance with this LAMP permit.

10. Notwithstanding condition No. 9, Stansley or Rocky Ridge shall not be required to designate a separate area for mixing 35,000 cubic yards or less of DWTM mixed and placed after the effective date of this LAMP permit in the L-shaped area surrounded by berms and located immediately south of the quarry on the Property ("Hereinafter Area L") at a ratio of not more than 35% DWTM, capable of passing the paint filter test prior to mixing, to not less than 65% soils. Stansley or Rocky Ridge shall document, in a log available to Ohio EPA upon request, the quantity of DWTM received after the effective date of this Modified LAMP permit into Area L, and shall notify Ohio EPA within seven days of having placed and mixed 35,000 cubic yards of DWTM with not less than 65% or 65,000 cubic yards of soils into Area L. Upon the effective date of this Modified LAMP permit, and after Stansley or Rocky Ridge mixes 35,000 cubic yards of DWTM with not less than 65% or 65,000 cubic yards of soils in Area L, the exception from the condition to designate a separate mixing area pursuant to this LAMP permit shall terminate. This temporary exception from the obligation to designate a separate mixing area in condition No. 9, shall not be construed to relieve Stansley or Rocky Ridge from complying with any condition of this LAMP permit.

11. Prior to mixing, Stansley or Rocky Ridge shall collect and analyze at least one sample per year of DWTM intended for beneficial use and shall collect and analyze additional samples if there are substantial changes in the generation process or the raw materials used. For the purposes of this LAMP permit, a substantial change in the raw materials is a change which results in higher levels of the constituents in Table 1 or additional constituents.
    a. The samples collected shall be representative of the approved materials beneficially used for the calendar year.
    b. Stansley or Rocky Ridge shall have the sample(s) analyzed for the constituents listed in Table 1.
    c. The reported detection limit for the analysis shall be below the limit specified for each constituent in Table 1.
    d. Stansley or Rocky Ridge shall employ analytical methods that generate constituent results in units consistent with the units in Table 1.

12. At a minimum, the DWTM intended for beneficial use shall be analyzed for the constituents specified in the Table 1. Stansley or Rocky Ridge shall not designate, make available, or beneficially use any DWTM that exceeds any constituent limit specified in Table 1.

Table 1

Constituents	Total (mg/kg)*
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	100
Zinc (Zn)	2800

* - dry weight basis

Ohio EPA reserves the right to add constituents to Table 1 as it deems necessary to protect human health or the environment, without modifying this LAMP permit, by providing 30 days notice to Stansley and Rocky Ridge.

13. The following shall be maintained by Stansley or Rocky Ridge for a minimum of five years after the placement of DWTM blend on the property for beneficial use authorized by this permit and made available to Ohio EPA upon request:

    a. Records of the annual volume of DWTM that are beneficially used on the specific property;
    b. A sampling plan detailing the sampling and analysis as required by conditions no. 11 and no. 12;
    c. All laboratory reports of all analyses of DWTM;
    d. Records documenting blending ratios.

14. Stansley and Rocky Ridge shall use Best Management Practices when storing, mixing, and beneficially using DWTM. All activities shall be accomplished in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including but not limited to the control of air pollution, leachate, and storm water run-on and run-off and protection of ground water and surface water. The Best Management Practices shall include, at a minimum, the following:

    a. Beneficial use, storage and mixing locations shall be at least 300 feet from wells and surface waters used for drinking water or watering livestock;
    b. Beneficial use, storage and mixing of DWTM shall be at least 100 feet from other surface waters of the state as defined in ORC Section 6111.01(H);
    c. Stansley or Rocky Ridge shall take necessary measures to create surface water diversions to catch any solids in runoff and to prevent run-on to the mixing or storage areas, and obtain any necessary ORC Chapter 6111 permits, NPDES permits, PTIs, storm water permits, and underground injection requirements;
    d. Stansley or Rocky Ridge shall take measures to control fugitive dust and other air emissions that may result from activities authorized through this LAMP permit and exemption.

15. Transportation, Storage, mixing and beneficial use of the DWTM blend shall not create a nuisance and shall not adversely affect public safety or health or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that storage, mixing or beneficial use of DWTM or DWTM blend is a threat to human health or the environment, then this LAMP permit may be revoked upon written notification from the Director. Immediately upon the effective date of any such revocation, Stansley and Rocky Ridge shall cease beneficial use of the DWTM.

16. Stansley or Rocky Ridge shall not place or cause to be placed for storage, mixing or beneficial use any DWTM or DWTM blend within a sand and gravel pit, a limestone or sandstone quarry, a drinking water source protection area with less than ten feet of low permeable clayey glacial till, a drinking water source protection area that has been determined to be highly susceptible to contamination or a one hundred gallon-per-minute aquifer with less than ten feet of low permeable clayey glacial till.

17. Stansley or Rocky Ridge shall not cause pollution or place or cause to be placed any DWTM or DWTM blend in a location where it causes pollution to any waters of the state, except in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state shall be reported to Ohio EPA by calling 1 (800) 282-9378 within 2 hours of discovery.

18. Stansley and Rocky Ridge shall not place DWTM or the DWTM blend authorized herein into any waters of the United States, including wetlands, subject to regulation under Sections 401 and/or 404 of the Federal Clean Water Act, or in isolated wetlands subject to regulation under ORC Sections 3745.113 and 6111.02 through 6111.029, without first obtaining any required authorizations from the U.S. Army Corps of Engineers and/or Ohio EPA. Stansley and Rocky Ridge shall comply with all applicable provisions of the Underground Injection Control Program, pursuant to Chapter 3745-34 of the Ohio Administrative Code.

19. Stansley or Rocky Ridge shall maintain the isolation distances listed in Table 2 for storage, mixing areas and beneficial use of DWTM or DWTM blend.

Table 2

Isolation distance requirement	To be maintained from
5'	Bedrock
100'	Surface waters of the State
300'	A sinkhole or a UIC Class V drainage well
300'	An occupied structure
300'	A private, potable water source
1000'	A medical care facility

20. In addition to the isolation distances requirements in Table 2, Stansley or Rocky Ridge shall not store, mix or beneficially use DWTM or DWTM blend within the following areas pertaining to public water systems:

    a. Within the sanitary isolation distance a public water system must maintain for a drinking water supply well as established in rule 3745-9-04 of the Administrative Code;
    b. Within the following areas defined in Table 3.

Table 3

Type of public water system	Setback
Community or non-transient, non-community public water system	A drinking water source protection area with less than ten feet of low permeable clayey glacial till or a drinking water source protection area that has been determined to be highly susceptible to contamination.
Transient, non-community public water system using ground water	The drinking water source protection area with less than ten feet of low permeable clayey glacial till or three hundred feet from the water supply well which ever distance is greater.

21. Stansley or Rocky Ridge shall comply with the following provisions regarding Ground Water Monitoring at the property located at 14591 W Toussaint North, Graytown,Ohio:

    a. Within 60 days of these conditions being issued, Stansley or Rocky Ridge shall install at least one ground water monitoring well northwest of well OW-3 at the Rocky Ridge property located at 14591 W Toussaint North, Graytown, Ohio, north of the wetland at the southeast corner of the quarry lake for the purpose of evaluating potential impacts to ground water from recent beneficial use activity conducted at or near the bedrock surface in the southern part of the facility.

    The monitoring well must be constructed the same as observation wells OW-1, OW-2, OW-3, and OW-4 with a screen length of 80 to 100 feet and a total depth of at least 10 feet below the lowest excavated elevation of the adjacent quarry. The well must be properly installed and developed in accordance with Ohio EPA's Technical Guidance Manual for Hydrogeologic Investigation and Ground Water Monitoring prior to sampling and in a manner that will provide a representative sample of ground water.

    b. Sampling and analysis methodology shall be provided in a plan to be submitted to Ohio EPA prior to sampling the well. The sampling and analysis plan shall be consistent with Ohio EPA's Technical Guidance Manual for Hydrogeologic Investigation and Ground Water Monitoring and provide for the collection of representative ground water samples from all monitoring wells sampled as part of these conditions. Samples shall be withdrawn from the wells within 10 feet of the water table. Samples must be analyzed for the parameters in Table 4, including analysis for total metals for metallic/metalloid cations:

Table 4

Parameters		
Alkalinity	Lead	Potassium
Ammonia	Magnesium	Sodium
Arsenic	Manganese	Specific Conductance
Barium	Nickel	Sulfate
Calcium	Nitrate-Nitrite	Temperature
Chloride	Oxidation-Reduction Potential	Total Dissolved Solids
Dissolved Oxygen	pH	Turbidity
Iron	Phosphorus	

c. Ground water samples shall be obtained from the well installed as part of condition no. 21.a. as well as the four observation wells (OW-1, OW-2, OW-3 and OW-4) within 30 days of constructing the monitoring well installed as part of condition no. 21.a. The results from the analysis of any ground water samples shall be submitted to Ohio EPA within 75 days of the samples being collected. Observation wells OW-1, OW-2, OW-3, OW-4 and the well installed as part of condition no. 21.a. shall be sampled semi-annually for two years beginning with the first sample withdrawn as part of this condition and then annually thereafter until released from this obligation by the Director. The samples shall be analyzed for the parameters in Table 4, including analysis for total metals for metallic/metalloid cations.

22. The Director may order an assessment of the ground water quality and corrective actions if the director determines that ground water quality may be impacted by activities approved under this LAMP permit.

23. The Director may add, delete, or change any conditions to this LAMP permit to protect human health or the environment. Upon Ohio EPA's written concurrence with any plan required by this LAMP permit, the plan shall be deemed to be incorporated in and made an enforceable part of this LAMP permit.

24. Each year, by January 31st, Stansley or Rocky Ridge shall submit a report identifying the beneficial use of the DWTM Blend for the previous calendar year and estimated future use. This annual report shall include the following:

a. Total amount, in tons, of DWTM beneficially used the previous calendar year, and location of the beneficial use of such quantity of DWTM Blend;
b. Analytical results for any analyses performed the previous calendar year;
c. Total amount, in tons, of DWTM stored on the Property at the time of the annual report;
d. An estimate, in tons, of the amount of stored DWTM and DWTM Blend expected to be used the following calendar year on the property;

e. A certification statement. The certification statement shall include the following language, and be signed by an authorized representative of Stansley Industries, Inc. and Rocky Ridge Development LLC:

"I certify, under penalty of law, that the information used to determine compliance with the requirements contained in Chapter 6111. of the Ohio Revised Code, and all rules adopted thereunder, for the period beginning (insert date of last certification statement) and ending (insert current certification statement date) was prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

The annual report shall be sent to the following address:

Ohio EPA - DMWM
Beneficial Use Unit
P.O. Box 1049
Columbus, OH 43216-1049

Stansley or Rocky Ridge shall not store a quantity of DWTM or DWTM blend at any property that exceeds the estimated projected amount in the annual report submitted for that property in accordance with this condition.

25. The Director shall be notified in writing within seven days if Stansley or Rocky Ridge discovers noncompliance with this LAMP permit. Issuance of this LAMP permit does not relieve Stansley or Rocky Ridge of the duty to comply with all applicable federal, state, and local laws, ordinances.

26. This permit to beneficially use DWTM in a soil blend as general fill shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use DWTM in a soil blend beyond the above date of expiration, Stansley or Rocky Ridge shall submit such information and forms as are required by Ohio EPA not later than 180 days prior to the above date of expiration.

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 which the Commission, in its discretion, may reduce 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:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

Sincerely,

Craig W. Butler
Director

cc: City of Toledo, Dept. of Utilities
Elizabeth Wick, DSW, NWDO
Mike Reiser, DMWM, NWDO
Shannon Nabors, Chief, NWDO

METHOD 9095B

PAINT FILTER LIQUIDS TEST

1.0 SCOPE AND APPLICATION

1.1 This method is used to determine the presence of free liquids in a representative sample of waste.

1.2 The method is used to determine compliance with 40 CFR 264.314 and 265.314.

2.0 SUMMARY OF METHOD

2.1 A predetermined amount of material is placed in a paint filter. If any portion of the material passes through and drops from the filter within the 5-min test period, the material is deemed to contain free liquids.

3.0 INTERFERENCES

3.1 Filter media were observed to separate from the filter cone on exposure to alkaline materials. This development causes no problem if the sample is not disturbed.

3.2 Temperature can affect the test results if the test is performed below the freezing point of any liquid in the sample. Tests must be performed above the freezing point and can, but are not required to, exceed room temperature of 25 °C.

4.0 APPARATUS AND MATERIALS

4.1 Conical paint filter -- Mesh number 60 +/- 5% (fine meshed size). Available at local paint stores such as Sherwin-Williams and Glidden.

4.2 Glass funnel -- If the paint filter, with the waste, cannot sustain its weight on the ring stand, then a fluted glass funnel or glass funnel with a mouth large enough to allow at least 1 in. of the filter mesh to protrude should be used to support the filter. The funnel should be fluted or have a large open mouth in order to support the paint filter yet not interfere with the movement, to the graduated cylinder, of the liquid that passes through the filter mesh.

4.3 Ring stand and ring, or tripod.

4.4 Graduated cylinder or beaker -- 100-mL.

5.0 REAGENTS

5.1 None.

6.0 SAMPLE COLLECTION, PRESERVATION, AND HANDLING

A 100-mL or 100-g representative sample is required for the test. If it is not possible to obtain a sample of 100 mL or 100 g that is sufficiently representative of the waste, the analyst may use larger size samples in multiples of 100 mL or 100 g, i.e., 200, 300, 400 mL or g. However, when larger samples are used, analysts shall divide the sample into 100-mL or 100-g portions and test each portion separately. If any portion contains free liquids, the entire sample is considered to have free liquids. If the sample is measured volumetrically, then it should lack major air spaces or voids.

7.0 PROCEDURE

7.1 Assemble test apparatus as shown in Figure 1.

7.2 Place sample in the filter. A funnel may be used to provide support for the paint filter. If the sample is of such light bulk density that it overflows the filter, then the sides of the filter can be extended upward by taping filter paper to the inside of the filter and above the mesh. Settling the sample into the paint filter may be facilitated by lightly tapping the side of the filter as it is being filled.

7.3 In order to assure uniformity and standardization of the test, material such as sorbent pads or pillows which do not conform to the shape of the paint filter should be cut into small pieces and poured into the filter. Sample size reduction may be accomplished by cutting the sorbent material with scissors, shears, a knife, or other such device so as to preserve as much of the original integrity of the sorbent fabric as possible. Sorbents enclosed in a fabric should be mixed with the resultant fabric pieces. The particles to be tested should be reduced smaller than 1 cm (i.e., should be capable of passing through a 9.5 mm (0.375 inch) standard sieve). Grinding sorbent materials should be avoided as this may destroy the integrity of the sorbent and produce many "fine particles" which would normally not be present.

7.4 For brittle materials larger than 1 cm that do not conform to the filter, light crushing to reduce oversize particles is acceptable if it is not practical to cut the material. Materials such as clay, silica gel, and some polymers may fall into this category.

7.5 Allow sample to drain for 5 min into the graduated cylinder.

7.6 If any portion of the test material collects in the graduated cylinder in the 5-min period, then the material is deemed to contain free liquids for purposes of 40 CFR 264.314 and 265.314.

8.0 QUALITY CONTROL

8.1 Duplicate samples should be analyzed on a routine basis.

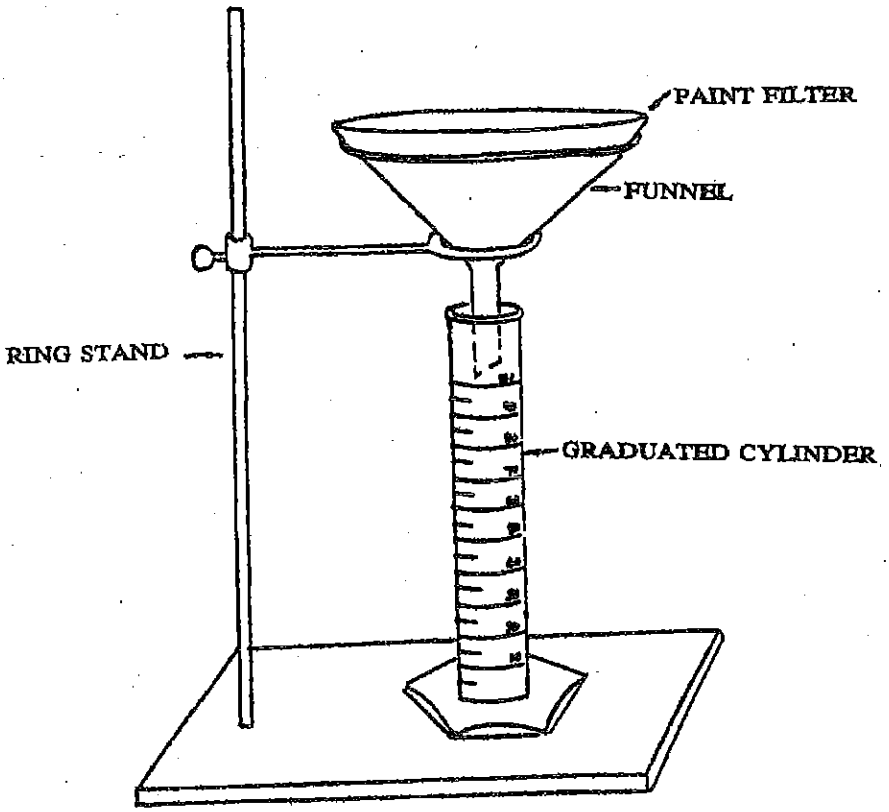
9.0 METHOD PERFORMANCE

9.1 No data provided.

10.0 REFERENCES

10.1 None provided.

FIGURE 1
PAINT FILTER TEST APPARATUS



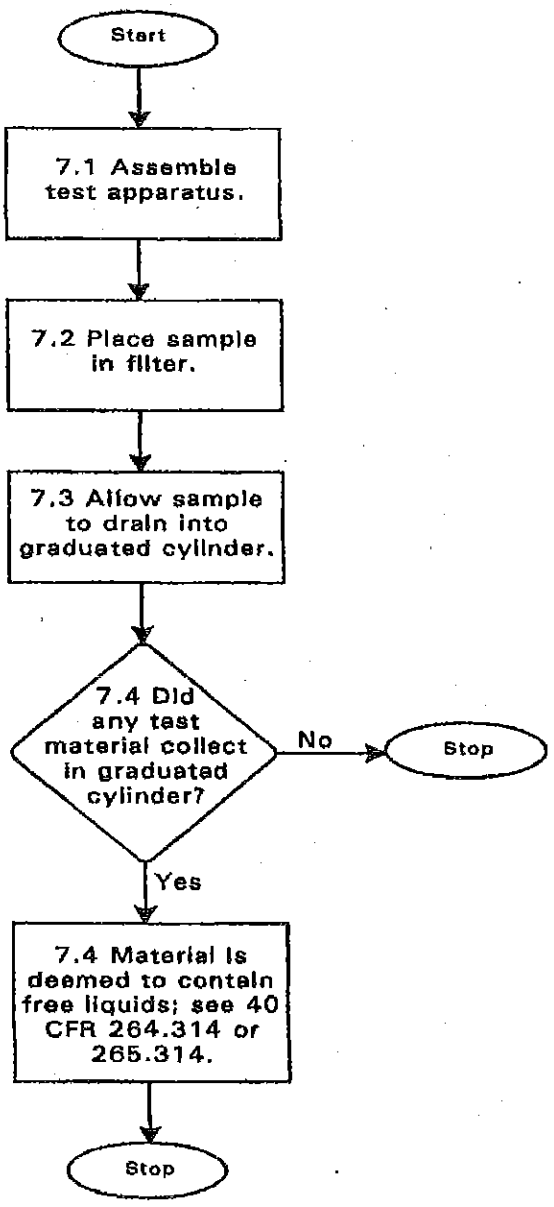

Start
7.1 Assemble test apparatus.
7.2 Place sample in filter.
7.3 Allow sample to drain into graduated cylinder.
7.4 Did any test material collect in graduated cylinder?
No
Stop
Yes
7.4 Material is deemed to contain free liquids; see 40 CFR 264.314 or 265.314.
Stop

EXHIBIT
tabbies
C

ATTACHMENT A

INTEGRATED ALTERNATIVE WASTE MANAGEMENT PLAN FOR ROCKY RIDGE QUARRY

FOR THE:
ROCKY RIDGE QUARRY
14591 W TOUSSAINT NORTH
GRAYTOWN, OHIO 43432

PREPARED FOR:
ROCKY RIDGE DEVELOPMENT LLC
3793 SILICA ROAD
SYLVANIA, OHIO 43560

PREPARED BY:
HULL & ASSOCIATES, INC.
219 S ERIE STREET
TOLEDO, OHIO 43604

REVISED FEBRUARY 2017

HULL

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1.0 INTRODUCTION

1.1 Site Background

Rocky Ridge Quarry (Site) is located at 14591 W. Toussaint North in Graytown, Ottawa County, Ohio, as shown in Figure 1. Ottawa County is approximately 270 square miles and is bounded by Lucas, Wood, and Sandusky Counties and Lake Erie. Land use of the surrounding property is primarily agricultural with residential housing bordering the south of the Site. The geologic setting in Ottawa County is mainly comprised of unconsolidated glacial and lake deposits overlaying a sequence of flat-lying sedimentary rocks. The county is located in the flat-lying Eastern Lake Plains section of the Central Lowlands physiographic region, which is characterized by lake bed sediments deposited by a series of Pleistocene-aged lakes of glacial origin. Topography is nearly level to gently sloping and barely above Lake Erie water levels (Ohio Department of Natural Resources [ODNR], 1994).

The thick sequence of carbonate bedrock from the Devonian and Silurian periods comprises a vast regional aquifer that serves as primary source of groundwater for many counties in Northwest Ohio. Ottawa County lies near the northeastern corner of this regional aquifer (ODNR, 1994). The regional carbonate aquifer, which underlies all of Ottawa County and served as a source of groundwater for much of the rural population, is buried by unconsolidated glacial deposits. As discussed in Client-Confidential ODNR files for the Site "ODNR Report Number 48 – Northwest Ohio Test Drilling for Test Well P-12 (ODNR, 1969) indicates that the test well extends through 38 feet of overburden, 38 feet of Greenfield Dolomite, and 284 feet of Lockport Dolomite. Accounting for an average dip of 17 feet per mile, the base of these water bearing bedrock formations would be approximately 193 feet above mean sea level (AMSL)". ODNR Test Well P-12 is located approximately 2.9 miles southwest of the Site. At this elevation approximately 250 feet of water bearing bedrock exists below the approximate final elevation of the quarry floor at the Rock Ridge Site.

Groundwater within the carbonate aquifer occurs in a network of interconnected fractures, bedding planes, and solution channels. Potentiometric maps for most of Ottawa County shows a general northeastward trending slope, indicating regional groundwater flow from sources of recharge in northern Ohio towards zones of discharge along Lake Erie (Schmidt, 1986).

1.2 Project Overview

Rocky Ridge Development, LLC (Rocky Ridge), acquired the former StoneCo Quarry near Rocky Ridge in 2015 and acquired an additional contiguous 138 acres of agricultural land in February 2016 to allow for borrow soil areas and agricultural test plots to be developed in partnership with various universities. Hull & Associates, inc. (Hull) is assisting Rocky Ridge Development, LLC to proactively seek solutions to help complete

a quarry reclamation in accordance with ODNR's quarry closure and reclamation requirements for a portion of the 35-acre excavation area, the 5-acre disturbed upland area, and possibly integrate a reclamation/habitat restoration project into the overall site stabilization plan.

Rocky Ridge plans to receive City of Toledo (COT) Drinking Water Treatment Material (DWTM) from the lagoons at the Collins Park Treatment Facility at the Site. The DWTM will be blended with native soils and beneficially used as controlled fill within the footprint of the former mine. DWTM will be transported from the COT Collins Park Treatment Facility to the Site, where it is planned to be blended by volume with conventional construction equipment, and placed on-Site in accordance with this IAWMP and applicable Ohio EPA approvals. In order to ensure proper placement of embankment/fill, representative samples of the soils and DWTM were collected by Rocky Ridge and subject to geotechnical laboratory testing (see Appendix G). Additionally, environmental testing of these materials was performed and the results are summarized in Section 2.2. The results of the laboratory-based analysis were used to establish proposed construction methods (e.g., optimal blends for the DWTM and soil blend, lift thicknesses, material preparation for placement and compactability, etc.) to be followed during placement of the material at the Site.

Rocky Ridge has 40+ years of experience in the environmental and aggregate industry in northwest Ohio. Rocky Ridge believes that reclaiming old quarries is one of the best practices to manage DWTM and they look forward to being an active ally in material management and hope to help create win-win solutions for managing on-site soils, DWTM, and reclaiming quarries.

2.0 GENERATOR EFFORTS TOWARDS WASTE MINIMIZATION AND RECYCLING

2.1 General

Rocky Ridge is currently utilizing DWTM from the City of Toledo water treatment lagoons that would otherwise require disposal. As a result, the current use of DWTM as part of the approved Land Application Management Plan (LAMP) and the proposed beneficial use of Blended Fill (DWTM/soil) to fill the quarry will utilize materials that would otherwise require disposal. No byproducts or coproducts are generated as part of the proposed activities within this IAWMP application at the Site, with the exception of stormwater and contact water, which will need to be covered under a National Pollution Discharge Elimination System (NPDES) permit. The NPDES permit will be for final effluent discharge from a surface water detention pond within the quarry to Packer Creek. The current permit is effective November 1, 2015 and expires October 31, 2020. The current permit requires the monthly monitoring/reporting of pH and total suspended solids (TSS), and a 24-hr discharge volume. The pH must be between 6.5 and 9.0 and the TSS cannot exceed 30 mg/L monthly average and a daily maximum of 45 mg/L. Additionally, the TSS loading cannot exceed 164 kg/day on a monthly basis and cannot exceed a daily maximum of 246 kg/day.

Section G of the current NPDES permit states that the current permit covers construction activities including any earth disturbance, including clearing, grading, excavating, grubbing and/or filling, that disturb one acre or more of total land. The permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided they comply with the conditions of the permit.

Per a discussion with Ohio EPA on January 27, 2017, a modification to the current NPDES permit will be required to cover activities anticipated under the IAWMP, which will include coverage for the management of water during quarry dewatering, stormwater runoff, and also surface water runoff that comes into contact with DWTM and/or soil/DWTM blend (i.e., contact water).

2.2 Hydrogeological Characterization

Rocky Ridge began full dewatering activities in January 2016. A pump was utilized to move water at a rate of 1.4 to 2.8 million gallons per day, 24 hours a day through April 2016. In April 2016 the water level was dropped to the point that the upper shelf of the former quarry was exposed, leaving only the deeper end of the former quarry with water remaining. From April 2016 to present, "maintenance" dewatering activities have taken place. To maintain the desired water level, the pump is only operated when the water level approaches the upper shelf of the former quarry.

Four observation wells (OW) (OW-1, OW-2, OW-3 and OW-4) were installed at the Site in 2016 to monitor the groundwater elevation and for collection of groundwater samples. The OWs were installed to depths ranging from 473 feet to 484 amsl. At each OW, the screen zone included top of bedrock to the well total depth. Boring logs with well construction information for the OWs are included in Appendix H-1. Conceptual geologic cross-sections are also provided in Figures 3A and 3B. Ground surface elevations for the ODNR well locations were obtained using LiDAR data (dated March/May 2006) acquired through the Ohio Statewide Imagery Program. Using information from the on-site OWs and publicly available ODNR well logs (included in Appendix H-4), a top of bedrock map was also created and is included in Figure 4. At the request of the Ohio EPA, additional hydrogeologic testing will be completed at the Site to determine both yield and hydraulic conductivity at the Site, in 10-foor intervals to a depth of 10 feet below the base elevation of the quarry. A plan to conduct additional hydrogeologic testing is included in Appendix I. The information obtained will be used to supplement the hydrogeological characterization included in the IAWMP. Existing plans and cross-sections will be revised to incorporate the deep boring locations. Copies of the boring logs and all generated data will be included in the revised IAWMP.

Chemical analysis of the on-site observation wells is discussed in Section 2.3.3.3.

2.2.1 Hydrogeological Modeling

To determine the potential water table drawdown associated with mined area dewatering operations conducted at the Site, Hull subcontracted In Aquas Veritas to construct and evaluate a computer-based numerical simulation of the Site and its surrounding area. The simulation of the projected groundwater depression, and subsequent rebound, was conducted using Waterloo Hydrogeologic's Visual MODFLOW (version 4.3). Visual MODFLOW is a well-known three-dimensional groundwater flow model that uses code originally developed by the USGS (MODFLOW). MODFLOW is a finite-difference groundwater flow model, which can accommodate anisotropic, heterogeneous aquifers in two or three-dimensional domains. The model allows transient flow simulations, and can handle confined, semi-confined, or unconfined conditions under active pumping or variable natural flow regimes. The methodology and detailed discussion is included in the Hydrogeological Model Report, provided in Appendix B-2.

The model was used to estimate the time needed to completely dewater the mined area under existing pumping rates as well as estimate the total drawdown in the area of the mined area under continued dewatering activities. In order to estimate the time needed to dewater the mined area, the model was run until the modeled recovery well ran dry. This occurred after approximately 280 model days. Based on the model, the rebound of the water table to background conditions will take several years to complete. Initial rebound of the water table will be relatively rapid due to the significant head difference between the surrounding aquifer and the mined area floor. As the external and internal head values become more similar,

the rate of rebound will be reduced. The model suggests that full background conditions will be achieved within approximately 5 years, although 75% of background should be reached within approximately one year at the mined area location.

In order to further characterize aquifer hydraulic conductivity at the above-referenced site, slug tests were conducted in four observation wells, OW-1, OW-2, OW-3 and OW-4, located in the immediate vicinity of the Rocky Ridge quarry, on 10/21/2016. Four slug-out tests, per well, were conducted using OW-1, OW-2 and OW-4, and three slug-out tests were conducted using OW-3. Water levels were constantly monitored during the testing to ensure that background water table elevation levels were re-established prior to conducting the next slug test. While data were recorded during the slug-in intervals of the tests, the data returned were insufficient for subsequent reduction.

Data analysis was conducted using Excel-based spreadsheet analytical software generated by the USGS (Halford and Kuniansky, 2002) using the Bouwer and Rice method. The results from the slug tests were very consistent across all four observation wells, returning hydraulic conductivity (K) values ranging from a low of 3.2 feet (ft.)/day to a high of 4.5 ft./day.

The average K value of these tests, 3.84 ft./day, is nearly identical to the K value obtained through previous groundwater modeling (i.e. 3.75 ft./day) which calibrated the aquifer's hydraulic conductivity to drawdown vs. time data measured in the quarry during dewatering activities. The slug test evaluation is included in Appendix B-2. Well logs are provided in Appendix H-1.

2.3 Description of Chemical and Physical Characteristics

Rocky Ridge coordinated the DWTM and blend sampling and analysis approach with Ohio EPA prior to implementation. Additional sampling was coordinated with Ohio EPA during the IAWMP application review process. Lagoon and on-site soil sampling was completed between April 7, 2016 and April 26, 2016. A DWTM Field Sample and Analysis Plan (FSAP) was prepared to guide Rocky Ridge with sampling methods. The DWTM FSAP is provided in Appendix A. The FSAP proposed sampling all three lagoons, however based on field conditions only Lagoons D and E were sampled. The laboratory reports are included in Appendix B-1 and results are summarized in this section. Totals analyses were completed on DWTM and DWTM/soil blends and Synthetic Precipitation Leaching Procedure (SPLP) was completed on DWTM/soil blends. On-site well monitoring and slug testing was completed in October 2016.

Three composite samples of DWTM were collected from three locations in Lagoon D and Lagoon E, for a total of six (6) samples. Once the analytical laboratory sample jars were filled, remaining DWTM from each sample location was composited per lagoon such that there were at least five (5) 5-gallon buckets per

lagoon to be shipped to the geotechnical laboratory for blending with soil. Representative samples were collected and homogenized prior to shipping to the geotechnical laboratory. Additionally, four (4) locations of on-site native soils were sampled from Rocky Ridge and shipped to the geotechnical laboratory for use in creating blends of DWTM and soil.

Chemical samples were shipped to ALS Laboratory and analyzed for various total constituents including metals, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyl (PCBs), and organics.
Hull's geotechnical laboratory received and processed the native soil and DWTM samples collected by Rocky Ridge. Moisture content as-received by the laboratory (ASTM D2216), liquid and plastic limits (Atterbergs, ASTM D4318), and grain-size analysis (ASTM D422, AASHTO T88) was performed on each native soil sample to classify them according to the United Soils Classification System (USCS).

Totals data for the DWTM Lagoon and soil/DWTM blend sample data were compared to:

- Ohio Voluntary Action Program (VAP) Residential Land Use
- Ohio VAP Generic Leach-Based Soil Values for Soil Class III for source ≥1/2 acre
- USEPA Region 9 Regional Screening Levels (RSL) Direct Contact Residential RSL
- USEPA Region 9 Protection of Groundwater Resident Soil to Groundwater Soil Screening Level (SSL) – Maximum Contaminant Level (MCL)
- USEPA Region 9 Protection of Groundwater Resident Soil to Groundwater Soil Screening Level (SSL) – Risk-Based Level

In addition, select total metal results were compared to the published background metal information for Lucas County, as there is no background study for Ottawa County.

SPLP data for the soil/DWTM blend sample data were compared to the following:

- 2014 VAP Generic Unrestricted Potable Use Standard
- USEPA May 2016 RSLs Protection of Tapwater THQ=1.0
- USEPA May 2016 RSLs Protection of Tapwater THQ=0.1
- Primary and secondary drinking water standards

On-Site groundwater and quarry water data were compared to the following:

- 2014 VAP Generic Unrestricted Potable Use Standard
- USEPA May 2016 RSLs Protection of Tapwater THQ=1.0

- USEPA May 2016 RSLs Protection of Tapwater THQ=0.1
- Primary and secondary drinking water standards

In addition to the above standards/screening levels, on-site groundwater and quarry water data were compared to the Soil/DWTM SPLP results and the Ohio EPA Elmore Water Works Ambient Groundwater Data (1987-2015 Average)[1].

2.3.1 DWTM Characterization

Chemical characterization of the DWTM within Lagoon D and E was completed to demonstrate the suitability of the material for the proposed project. Totals analyses were completed and the most "conservative" sample identified. This sample was then used to create soil/DWTM blends to represent possible soil/DWTM combinations.

Table 1 presents the chemical results of the lagoon DWTM samples. No parameters from the DWTM samples exceeded the Ohio VAP standards. Of the 15 metals tested, five metals exceeded one or more of the USEPA Region 9 levels, however all but one metal (selenium) were below background for Lucas County. There is no established background concentration for selenium in Lucas County. Of the 53 PAHs analyzed, Lagoon E had six PAHs that exceeded one or more USEPA Region 9 levels. Sample E-2 was determined to be the most conservative DWTM sample based on the COCs and concentrations present and therefore was used to create the soil/DWTM blends, as discussed in Section 2.3.3.

2.3.2 On-Site Soil Characterization

On-Site soils were also sampled at Rocky Ridge from four (4) locations within the proposed borrow area and geotechnical analyses completed. No chemical analyses were completed on the native on-site soils; however, the geotechnical results were used to select one on-site sample to use to create the blends along with the most conservative DWTM sample.

The four native on-Site soil samples tested can be described as a lean clay with sand or a lean clay and classified with the USCS group symbol of "CL". Different percentages of soil and DWTM were blended and subject to Standard Proctor testing to determine moisture-density relationships to use during compaction quality assurance control testing. As expected, the maximum dry density decreased, with an increasing

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1 http://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=b0b56b0dd1fc4ee991cbdcd454b07cZe Accessed October 19, 2016.

percentage of DWTM. The optimum moisture content of the blended material was also relatively consistent – the higher the maximum dry density, the lower the optimum moisture content. As previously mentioned, the blends were mixed by volume, not by weight, and thus should be comparable to how the material will be handled and blended by construction equipment on-Site.

The Slope Stability Analysis is included in Appendix F. The Summary of Geotechnical Laboratory Testing Results with more detailed results and discussion is included in Appendix G-1.

2.3.3 Soil/DWTM Blended Fill Characterization

The following three soil/DWTM blends were selected for the preliminary testing program and three replicates of each blend were prepared using the selected DWTM and on-site soil sample:

- 50% Native Soil and 50% DWTM (1:1 soil:DWTM)
- 67% Native Soil and 33% DWTM (2:1 soil:DWTM)
- 33% Native Soil and 67% DWTM (1:2 soil:DWTM)

One blend sample of each mix was analyzed using SPLP. The objective of this analysis is to simulate material sitting in-situ exposed to rainfall (with an assumption that the rainfall is slightly acidic) then evaluate the organic and inorganic analytes present. Generally, the SPLP method simulates environmental precipitation and the leaching potential of a contaminant in soil, and offers a method to assess chemical mobility in the environment. A Sampling and Analysis Plan (SAP) has been developed to characterize the chemical constituents in the blended materials to ensure that blended materials being placed are meeting or exceeding applicable chemical standards. The SAP, provided in Appendix J, discusses sample methodology, laboratory analyses, data quality assurance/data quality control, frequency of sampling, and applicable comparison standards.

2.3.3.1 Soil/DWTM Totals Analysis Results

Table 2 presents the chemical results of the soil/DWTM blend samples. No parameters reported above the method detection limits (MDL) exceeded the Ohio VAP standards. Of the fifteen metals analyzed, only two metals, arsenic and thallium, exceeded one or more of the USEPA Region 9 levels, however thallium results were below back ground for Lucas County and arsenic was generally similar to background, with samples exceeding Lucas County background marginally. Of the 32 Volatile Organic Compounds (VOCs) analyzed, only two were detected above the MDL and one exceeded applicable standards. Of the 53 PAHs analyzed, 15 were detected above the MDL and 7 exceeded one or more standard. No pesticides or PCBs were detected above the MDL.

For the 33/67 soil/DWTM blend parameters detected above the MDL, in addition to arsenic and thallium exceedances, one of the three samples exceeded the RSL for benzo(a)pyrene. Some metals exceeded the Soil to Groundwater SSL MCL levels but no other parameters exceeded the Soil to Groundwater SSL MCL. Cyanide exceeded the Soil to Groundwater RBL in all three samples, and one sample exceeded the RBL for benzo(a)anthracene, benzo(a)pyrene, and benzo(b)fluoranthene.

For the 50/50 soil/DWTM blend parameters detected above the MDL, in addition to arsenic and thallium exceedances, one of the three samples exceeded the RSL for benzo(a)pyrene. Some metals exceeded the Soil to Groundwater SSL MCL levels but no other parameters exceeded the Soil to Groundwater SSL MCL. Cyanide exceeded the Soil to Groundwater RBL in all three samples, and one sample exceeded the RBL for benzo(a)anthracene, benzo(a)pyrene, and benzo(b)fluoranthene.

For the 67/33 soil/DWTM blend parameters detected above the MDL, only arsenic and thallium exceeded the RSL. No other parameters exceeded the RSLs. Some metals exceeded the Soil to Groundwater SSL MCL levels but no other parameters exceeded the Soil to Groundwater SSL MCL. Cyanide exceeded the Soil to Groundwater RBL in all three samples, and one sample exceeded the RBL for 4,6-dinitro-o-cresol.

Overall, metals were generally close to the Lucas County, Ohio background concentrations. It is important to note that many of the soil to groundwater screening levels are several orders of magnitude less than the measured Lucas County, Ohio background concentrations. While the metals in the blends exceeded some screening levels, many were similar to Ohio background concentrations. Metal and mercury concentrations generally did not vary significantly across the three blends. Concentrations of organic carbon, cyanide and PAHs, and pH values, declined with the higher soil ratio blend.

2.3.3.2 Soil/DWTM SPLP Analysis Results

The soil/DWTM blends were then analyzed using SPLP and results compared to various screening standards, including Ohio VAP, Primary and Secondary Drinking Water, USEPA RSLs for residential soil to groundwater, and on-site/local groundwater wells. The objective of the SPLP analysis was to simulate material sitting in-situ exposed to rainfall.

Table 3 presents the SPLP chemical results of the soil/DMTW blends. No chemical constituents were detected in the blends exceeded the Ohio VAP standards. Arsenic concentrations exceeded the USEPA RSL for Soil to Groundwater, but were well below Primary and Secondary Drinking Water Standards.

2.3.4 On-Site Well and Quarry Sampling Results

Groundwater samples were collected from the four observation wells (OW-1 through OW-4) and from the water within the quarry on September 1, 2016. Figure 2 shows the sampling well and ODNR water well locations. Samples were analyzed for metals, chloride, turbidity, sulfate, ammonia, alkalinity, specific conductance, and total dissolved solids per Ohio EPA comments dated October 7, 2016. Boring logs, field notes and laboratory analytical results are provided in Appendix H.

Results from the September 1, 2016 groundwater sampling event in addition to a sample collected from the Site's NPDES outfall on January 27, 2016 are presented in Table 4. Results were compared to US EPA primary and secondary drinking water standards, Ohio VAP Unrestricted Potable Use, and USEPA Region 9 residential tap water screening levels. In addition to the on-site wells, the average concentrations from 1987 to 2015 from the Village of Elmore Public Water Supply Well Ambient Groundwater and the 66/33 soil/DWTM blend SPLP results are included in Table 4 for comparison purposes.

On-site well sampling results and nearby groundwater data indicate that metals appear to be naturally high in the ambient groundwater in the vicinity of the Site. Of the 21 metals analyzed in on-site samples, ten were detected above the MDL. Arsenic, barium, beryllium, iron, lead and manganese exceeded drinking water standards in OW-2. Manganese also exceeded one or more drinking water standards in OW-3. It is important to note that OW-2 had what appeared to be significant iron bacteria present. Iron staining was also observed on the highwall to the quarry located east of OW-2. Only iron exceeded drinking water standards in all of the on-site well samples. However, iron was also elevated in the Elmore ambient groundwater. The quarry water sample only exceeded the sulfate drinking water standard, however the Elmore ambient groundwater sulfate concentration also exceeded the drinking water standard and was higher than most of the on-site well concentrations.

Table 5 shows the water levels in the on-site wells. A steady drop in static water levels was observed throughout the monitoring period. Table 6 summarizes wells within one mile of the Site, as provided by ODNR, and site-specific information for the OWs.

3.0 PROJECT OVERVIEW

3.1 Facility Location

Beneficial use of the DWTM is proposed at the Rocky Ridge Quarry property located at 14591 West Toussaint North, Graytown, Ottawa County, OH 43432. A Site Location Map is provided as Figure 1.

3.2 Proposed Use and Implementation

The proposed beneficial use of the DWTM facilitates reclamation of the Rocky Ridge quarry, while utilizing a material that otherwise requires an off-site disposal facility. The abandoned quarry provides substantial and sustainable air space for long-term placement and permanent storage of the DWTM, provided the blending of the DWTM with soil as discussed herein. Rocky Ridge (the Operator) proposes to blend the DWTM with soil to create a stable, controlled fill material inside the quarry.

Based on the results of the laboratory testing, it appears the Blended Fill is suitable for its intended use as embankment material as a screening berm and to fill the quarry at the Site. Once mixed with the DWTM, the blended material appears to be a compactable material with relatively low permeability. The results demonstrate that a blend of two parts native soil, and one part DWTM (67% On-Site Soil and 33% DWTM) by volume when compacted to at least 85% of the maximum dry density (MDD) and at or above its optimum moisture content (OMC), as determined by the moisture-density relationships per the Standard Proctor testing results, can achieve a permeability of 10^{-6} cm/sec or less, which is two orders of magnitude less that the regional bedrock permeability (See Appendix G). Therefore, the two parts soil to one part DWTM blended material can be considered suitable for use in the beneficial use application at the Site as the SPLP and other laboratory testing and Site information demonstrates that the Blended Fill will not likely create a nuisance or pose an unacceptable risk to human health or the environment, and is capable of complying with other applicable laws.

3.2.1 Description of Excavation Approach and Subgrade Preparation Protocol

Minimal excavation is anticipated as part of the IAWMP, other than excavation of the native on-site soils as borrow for blending and embankment. However, existing loose material on the quarry bench will be cleared prior to placement of Blended Fill. Existing rock and stone piles will be removed and used on-site for road base or taken off-site. Existing quarry lime fines (i.e., lime generated from quarry operations and not DWTM lime) stockpiles that are currently located within the quarry footprint (and were underwater prior to pumping of the quarry) may either be removed, utilized during blending activities, or left in place. Existing quarry lime fines stockpiles may only be left in place as long as they can be proven to provide a stable, suitable subgrade for Blended Fill. Ultimately, a subgrade surface will be cleared down to competent rock or to a stable, suitable subgrade to facilitate placement of the leveling layer. A stable, suitable subgrade

is achieved if the subgrade passes a proof roll with a fully-loaded tandem axle dump truck (or equivalent). Additionally, any debris or equipment previously submerged prior to dewatering shall be removed from the quarry and properly disposed/stored prior to placing Blended Fill (DWTM/soil).

3.2.2 Description of Process/Blending

The Operator plans to utilize construction equipment to blend DWTM with soil. The soil source used to blend with the DWTM will be native soil generated from borrow areas in the adjacent farm fields owned by Rocky Ridge. Based on the depth to bedrock as reported by local bedrock maps, exploratory test pits excavated by Rocky Ridge, and the thickness of overburden encountered during well installation, it is anticipated there is an adequate volume of overburden soil available on-site for the proposed operations.

The Operator plans to perform blending activities within the quarry, in small (approximate 2 to 3-acre), efficient work areas. These blending cells will be prepared on a competent, stable, suitable subgrade and constructed with a maximum 6-foot tall soil berm around the perimeter of the individual blending cells. In order to import and dry the DWTM, blend with soil, and place/compact the Blended Fill in an efficient manner, it is anticipated that the Operator will utilize multiple cells at the same time. To facilitate an iterative and systematic process, the Operator will generally follow these procedures when utilizing the cells:

1. Install leveling layer (for first blending cell directly on bedrock surface) and construct maximum 6-foot tall soil berms to create approximate 2 to 3-acre blending cells.

2. Construct haul roads to allow dump trucks to offload DWTM directly into the various blending cells.

3. An initial cell will be used to dry the DWTM to a workable moisture content. The DWTM will be placed in minimum 6-inch lifts up to maximum 18-inch lifts and allowed to dry. The DWTM will remain in the blending cell approximately 3 to 5 days (i.e., duration dependent upon weather, DWTM lift thickness placed, wind, etc.) and exposed to the sun and wind until a suitable and workable moisture condition is achieved. If Rocky Ridge desires to expedite the drying process, the DWTM may be "turned over" with excavators, dozers, or with pull-behind discs.

   Due to the DWTM's high affinity for water, a paint filter test will be used for the verification that DWTM is at a moisture condition suitable for blending with soil. This is a practical and efficient approach in quickly determining if the DWTM moisture is too high as the soil/DWTM blend will not be able to achieve compaction if free liquids are present. A paint filter test will be performed daily when soil and DWTM is being blended in general accordance with U.S. EPA Paint Filter Liquids Test Method (EPA 9095B) using a standard conical paint filter [60 +/- 5% (fine meshed size)] available at most local paint stores. A passing test is defined as a sample that does not pass through the filter during the five (5) minute period and the material would be considered to be at a suitable moisture condition for blending. If any portion of the sample passes through and drops from the filter in the 5-minute period, then the material is deemed to "fail" the test as it contains free liquids and would be considered unsuitable for blending with soil. The daily moisture checks will be documented on the form provided in Appendix K.

4a. If the DWTM is placed in a 6-inch lift and the material is at an acceptable moisture content as verified through the paint filter test, a 12-inch thick soil lift may then be placed over the DWTM to facilitate the 2:1 ratio for blending. The DWTM and soil will then be mixed in-place within the cell with a dozer with ripper and/or a pull-behind disc to create a relative homogenous blend and to minimize "patching". The 18-inch thick layer of blended material will then be compacted in place and the process repeated until the blending cell is at capacity. (As an alternative, the soil may be placed first within the blending cells prior to the proper thickness of DWTM is placed over the soil layer to achieve the 2:1 blending ratio.)

4b. If the DWTM is placed in a 6 to 24-inch thick lift, the material will remain in the cell until it is at an acceptable moisture condition. Once the material has dried out, the DWTM may be relocated to an adjacent cell and placed in a 6-inch lift and blended/compacted in a similar manner as discussed in Step 4a. Alternatively, as the DWTM material is relocated to an adjacent cell, the soil may be incorporated simultaneously to create the proper 2:1 blending ratio as the material is being placed and then compacted.

5. Upon achieving a satisfactory blend in Step 4a or 4b, the Blended Fill will be compacted in eighteen-inch (18") maximum loose lift thicknesses. Each lift will be compacted with a sheepsfoot compactor in order to meet the eighty-five percent (85%) compaction specification at or above its optimum moisture content, as determined by Standard Proctor (ASTM D698). The Operator is proposing to use a Holmes 60x60 sheepsfoot, pull-behind roller to compact the Blended Fill. Manufacturer's information on the compactor is provided in Appendix I. (An equivalent sheepsfoot compactor of similar weight may be used, if approved by the Engineer.)

6. One or several cells may be used concurrently to dry out the DWTM. Similarly, one or several cells may be used to blend, place, and compact the Blended Fill. As the blending cells near capacity, new blending cells will be constructed adjacent to or over previously completed blending cells. The construction and filling of the blending cells will continue as additional fill is placed within the quarry.

The Operator may adjust the procedures as outlined above provided that the blending process creates a DWTM final Blended Fill that has a ratio of one (1) part DWTM to two (2) parts soil (by volume). If these procedures are significantly changed, Rocky Ridge will submit a modification to this IAWMP for approval by Ohio EPA prior to making the change. Note that the Blended Fill will be mixed in bulk, and that the 2:1 blend ratio may vary slightly from one area to another due to differences in moisture content, blend process, soil variances, or other factors.

As previously discussed, in order to import DWTM, blend material, and place/compact material in an efficient manner, it is anticipated that the Operator will utilize multiple cells at a time. Additionally, the Operator may elect to berm a portion of the property to the north and to the west of the quarry to create additional blending areas. If utilized, the Blended Fill would be mixed in those cells, and transported, placed, and compacted within the quarry at a later time.

Interim berms within the quarry are anticipated to be constructed between cells utilizing either Blended Fill or soil. The maximum slopes are provided on the Site Plan drawings in Appendix D. If Blended Fill is utilized for interim berms, they shall be constructed in lifts and compacted as previously specified if they are intended to remain in-place.

3.2.3 Storm Water Management Strategy

Perimeter screening berms are currently under construction around the perimeter of the quarry pursuant to the approved LAMP and ODNR's reclamation plan, which not only screens the work area from surrounding properties, but minimizes additional stormwater from entering the quarry. The overall stormwater management strategy of the IAWMP is to manage the DWTM contact water (i.e., liquids that come into direct contact with DWTM) within the ponds located in the quarry until it can be discharged to a permitted NPDES outfall. The blending cells will be prepared in a manner to promote positive drainage to the pond (e.g., slightly graded toward the pond, utilizing temporary construction drainage ditches, culverts through the berms, temporary pumps, etc.). The drying and blending cells will be bermed to prevent DWTM contact water from entering the deep (southern) end of the quarry.

The current location of the dewatering pump is in the northwestern corner of the quarry, within an existing pit or pond. The dewatering pump discharges to a drainage ditch, which is currently a permitted NPDES outfall. The IAWMP strategy is to utilize this pond as a location to collect stormwater runoff and contact water, where it will be contained within this pond, and promptly discharged to the permitted outfall. As previously discussed, this will require a permit modification to the existing NPDES permit. The Stormwater Management Plan is included in Appendix C.

3.2.4 Description of Placement of Blended Fill

Upon preparation and survey of the quarry bottom, the Blended Fill will be placed and compacted in lifts within blending cells in the quarry as described in the sections above. The placement of Blended Fill is scheduled to be performed in three general (3) Phases:

Phase 1: This phase will include placement of Blended Fill in the northern portion of the quarry on the mid-level bench at an approximate elevation 552 feet (NAVD88). The proposed design grades for Phase 1 are included in the Plans found in this IAWMP in Appendix D. This will require maintaining the water elevation of the quarry below the quarry bench and all subsequent Fill Areas of the Phase. Noteworthy items of Phase 1:

- A soil Diversion Berm will be constructed at the edge of the El. 552 feet bench for both safety and stormwater management purposes. A drainage ditch may need to be installed between the haul road and Diversion Berm and sloped towards the pond – if the pond is

higher in elevation than the ditch, then a pump will need to be used to convey water to the pond.

- A minimum forty-foot (40') buffer will remain between the toe of Blended Fill and the edge of the El. 552 feet bench to provide ample work room for maintenance, equipment access, stormwater management, and to facilitate Phase 2 work activities.
- Maximum Phase 1 final slopes are 4H:1V. Interim slopes are also at a maximum of 4H:1V.
- Minimum final Phase 1 slopes are at 2% to promote positive drainage, and erosion control features (i.e., check dams, rock letdowns, etc.) shall be installed upon completion of final grades.

Phase 2: This phase will consist of placement of Blended Fill within the deeper southern portion of the quarry, at approximate elevation 496 feet. This will require dewatering the entire quarry to allow for placement of Blended Fill on a dry, competent subgrade surface. The proposed design grades for Phase 2 are included in the Plans found in this IAWMP in Appendix D.

Phase 3: This phase will consist of placing Blended Fill within the limits of the quarry (i.e., within the screening berm), and on top of previous placed Blended Fill. The design grades (maximum elevation of ~617.5 feet) will exceed surrounding farm field elevations to allow positive drainage away from the reclaimed quarry. The proposed design grades for Phase 3 are included in the Plans found in this IAWMP in Appendix D.

3.2.5 Groundwater Monitoring and Groundwater Contingency Plan

The Groundwater Monitoring is included in Appendix E-1. The plan was developed to monitor both flow (level) and chemical characteristics of the groundwater at the Site during and after DWTM filling operations at the Site. The Contingency Plan is included in Appendix E-2.

As discussed in Section 2.2, additional hydrogeological testing will be conducted at the Site. Information obtained from the additional testing will be used to determine the placement of additional monitoring wells in the Groundwater Monitoring Plan. The additional monitoring wells will include development and sampling of eight additional monitoring wells at the property. It is assumed that the eight wells will be installed in clusters of two wells at a minimum of four separate locations across the property. A minimum of two of the well clusters will be placed as close as possible to the southern border of the quarry, as the majority of residential areas in closer proximity to the property are located to the south of the quarry. It is assumed that a third cluster will be located to the west of the quarry. The fourth and final cluster may be located to the north or northeast of the quarry, in the presumed downgradient flow direction of the regional carbonate aquifer. Additional hydrogeologic testing and amendments to the Groundwater Monitoring Plan are include in Appendix L.

A Contingency Plan has been prepared as part of the IAWMP application to present a plan for providing the surrounding properties with potable water (e.g., installation of a waterline, hauling of water, etc.) in the event the activities at the Site negatively impact groundwater quality. This contingency plan is similar to the plan required by the Ohio Department of Natural Resources. Note that documentation of financial assurance is also provided in an appendix of the groundwater monitoring plan. Refer to Appendix E-2 for the Contingency Plan.

3.2.6 Engineering Controls

Engineering controls are necessary for this project to be protective of human health and the environment during the course of the project. Most notably, the main purpose of these engineering controls is to minimize or prevent an impact to surrounding groundwater via quarry water. Additionally, it is known that the Site is located on well fractured limestone, which provides additional avenues to the surrounding groundwater aquifer. To mitigate potential problems, the following engineering controls are proposed to be implemented:

- Maintain Quarry Dewatering: To ensure the work area remains dry and uncompromised, the water elevation inside the quarry will be maintained below the work areas. The quarry water will be dewatered and discharged through the existing, permitted dewatering system. The existing NPDES permit will need to be modified prior to discharging DWTM contact water through the existing outfall. The current location of the dewatering pump in an existing pond will require relocation as the IAWMP Phases move forward.

- Leveling Layer: For blending activity efficiency, it is necessary for the blending to occur within the quarry in approximately 2 to 3-acre cells. To minimize entering of the high-moisture DWTM into the limestone fractures that may be present of the quarry bench and in the south end of the quarry, a three-foot (3) thick soil or Blended Fill leveling layer will be installed as the first lift in the first cell on suitable subgrade prior to receiving DWTM within the quarry. A leveling layer is required in each first cell located directly on the bottom of the existing quarry. Maximum six-foot (6') tall berms consisting of either soil or Blended Fill will also be constructed on the outside edges of each cell to contain the contact water. The Leveling Layer will be placed in maximum 8-inch loose lifts (i.e., ~6-inches compacted) and compacted to a minimum of 90% of the maximum dry density and at or above its optimum moisture content as determined by Standard Proctor testing. Prior to placing each subsequent lift of the leveling layer, the surface of the previous layer will be scarified (e.g., sheepsfoot indentations if ¾-inch or greater in depth, disced, tracked with a dozer, etc.) in between lifts to ensure an adequate bonding between lifts. A smooth drum roller will not be used for compaction of the Blended fill. If a smooth drum roller is used to seal the work area as a result of forecasted rain, the smooth-drummed surface will be scarified prior to placing the next lift. Compaction testing of the leveling layer will be tested at a frequency of 2 tests per acre per lift.

- Diversion Berms: A Diversion Berm will be constructed with soil near the edge of the existing quarry bench at an approximate elevation of 552. These berms have a dual purpose in providing safety to trucks and construction equipment, as well as to preventing unwanted stormwater from entering the quarry water.

3.3 Anticipated Dates of Start and Completion

The Operator anticipates commencing IAWMP activities immediately pending Ohio EPA approval and completion of the perimeter screening berm currently in process and being completed as part of the approved LAMP and ODNR mining reclamation plan. The Operator anticipates the project will be completed in approximately 10 years from project start.

3.4 Other IAWMP Projects

All DWTM imported to the Site under the IAWMP is anticipated to be beneficially used on-Site. No use of DWTM is proposed for other IAWMP projects at this time.

At this time, this is the first known IAWMP project utilizing DWTM for beneficial use. Historical uses of lime products, rather than lime sludge or lime wastes, have been and continue to be used in lesser blended amounts in the construction industry to modify soil moisture. Consequently, it should be noted that Rocky Ridge plans to continue to temporarily stockpile Agricultural Lime (Aglime), which is not considered part of the IAWMP process, over portions of the Site until the material can be taken off-site for use in construction applications; the Aglime may also be used during the soil-DWTM blending process under the IAWMP if the moisture condition of the blended material needs to be modified/reduced to facilitate compaction.

3.5 Estimated Volume and Rate of Disposal

Based on the estimated airspace volume within the quarry using bench elevations of 552 and 496 feet, respectively, from the Site's mining permit IM-320, and utilizing a general top elevation of 617.5 feet, there is roughly 3.8 million cubic yards (CYs) available within the quarry for beneficial use of blended material. This volume will be further refined as the internal quarry bench grades are prepared and surveyed for accuracy, as well as a final design for Phases 2 and 3 is completed. This volume does not include screening berms outside of the quarry.

Approximately 1,000 to 1,500 CY, at an average of 1,200 CY, of DWTM is expected to arrive from the City of Toledo Collins Drinking Water Treatment Plant (DWTP) per day. Trucks are anticipated to operate for nine (9) months per year, Monday through Friday (may work Saturdays, if needed), with some anticipated weather days. As the DWTM will be blended with on-Site soil or other borrow sources, the blended material will consist of an approximate 2:1 soil:DWTM, by volume. It is anticipated that the DWTM roughly consists of approximately thirty-five (35) percent solids and sixty-five (65) percent water by volume. DWTM has a high affinity for water and will need to be nominally dried out so there are no free liquids present, as verified with a paint filter test, and the material can be properly blended and compacted with on-site soil. Based on Rocky Ridge's experience with working with the material at the Site as part of the LAMP, the DWTM will experience some reduction in volume when drying out, however, an accurate quantitative value

cannot be determined as the magnitude will vary based on the area (spatially and vertically) the DWTM material is being excavated from within the City lagoons and ambient weather conditions (e.g., temperature, wind speed, sun exposure, etc.). Based on a rough estimation, an average volume reduction of 10 to 25%, with sometimes no reduction, can be realized when the DWTM dries out in the blending cells for the 3 to 5-day timeframe. The Operator anticipates placement of approximately 2,250 to 4,500 CY of blended material per workday. As previously discussed, based on the depth to bedrock as reported by local bedrock maps, it is anticipated there is an adequate volume of overburden soil available on-site for the proposed operations.

3.6 Documentation of Work Activities

3.6.1 Material Documentation

As previously stated, the Operator has procured a contract with the Toledo Collins DWTP to receive the DWTM. As part of the contract, the Toledo Collins DWTP tracks the number of truckloads of DWTM removed from their lagoons. The trucks directly travel to the Site to deliver the DWTM. Therefore, in order to document the beneficial use activities, the Operator plans to obtain truck count information on a monthly basis, which can be correlated to a beneficial use placement volume based on estimated truck volume.

Additionally, aerial surveys (via drone, field survey, or aerials) may be performed on an annual basis within the quarry to track placement volume. An initial survey of the prepared subgrade within the mid-bench (i.e., El. 552 feet) and the bottom bench (i.e., El. 496 feet) of the quarry will be performed prior to placement of Blended Fill. Therefore, annual surveys can be compared to calculate an annual in-place volume of Blended Fill placement.

3.6.2 In-Place Density Testing

To ensure Blended Fill is placed in a manner that achieves a well compacted and stable fill material, In-Place Density testing will be performed on a regular basis during Blended Fill placement activities. The geotechnical laboratory test results provided in Appendix G-1 demonstrates that the Blended Fill can achieve a relative low permeability of 10^{-6} cm/sec or less, which is significantly lower than the calculated permeability of the local bedrock by the MODFLOW modeling. Therefore, a key objective of the compaction testing is to demonstrate the Blended Fill is being placed in a stable condition to facilitate the construction and filling activities.

Density testing is anticipated to be performed using a nuclear densitometer to verify that the placed Blended Fill is being placed at a minimum of eighty-five (85) percent compaction specification at or above its optimum moisture content to ensure that the material meets the stability and compaction requirements of the Blended Fill, and to ensure that the desired permeability rate lower than the local bedrock is achieved. In-place

density and moisture content will be compared to Standard Proctor laboratory test results (ASTM D698) of the Blended Fill (blended based on volume). Based on the results of the previously completed Standard Proctor testing performed on specimens considered to be representative of the Blended Fill that consists of 67% on-site soil and 33% DWTM (Hull Lab Sample # B16-1161) as provided in Appendix G-1, the maximum dry density to be used as the compaction control criteria will be 108.5 pcf and an optimum moisture content of 17.2%. As additional moisture-density relationships are developed through Standard Proctor tests, as a conservative approach, the highest maximum dry density and highest optimum moisture content from the group of the Standard Proctor tests will be used during compaction control to ensure the density and moisture contents are being achieved.

If in-place density or moisture does not meet required specifications, the Fill area shall be re-worked in between passing tests to achieve passing compaction results (e.g., drying/wetting of Blended Material, additional compactive effort, etc.). Also, additional moisture-density (Proctor) curves may be necessary if the compaction control criteria being used (i.e., Hull Lab Sample # B16-1161) does not appear to be representative of the DWTM and/or soil material being placed. At a minimum, up to 3 additional Standard Proctor tests will be performed prior to commencing blending operations at various locations across the proposed borrow area that is mixed with the appropriate DWTM ratio to confirm the appropriate moisture-density control criteria are being used. Additionally, if Blended Fill continually does not meet required compaction specifications, alternative blending techniques should be considered, and additional geotechnical testing may be performed.

At a minimum, one passing in-place density test should be performed for every 10,000 CY of Blended Fill placement, with a minimum of 3 passing tests per week when fill placement is ongoing. Based on the anticipated Blended Fill placement rate of approximately 3,000 to 4,500 CY per work day, this will result in a site visit by a soils technician approximately once to twice per week. At the onset of the project, a higher frequency of compaction testing and site visits by the soils technician will be performed until the operator is comfortable that the drying, blending, and placement techniques result in routinely passing compaction tests. It is the Operator's expectation that the soils technician will perform several tests that are spatially distributed across the work area, at the time of the site visit, which will essentially result in a higher frequency of tests compared to the minimum required of one test per 10,000 CY, with a minimum of 3 passing tests per week. This testing frequency seems appropriate for a fill material that is not anticipated to support structures. The results of the in-place density testing shall be documented in Annual Reports.

3.6.3 Annual Reports

During the course of permitted construction activities per the IAWMP, the Operator will submit an Annual Report documentation general work activities. The Annual Report will contain geotechnical information (i.e.,

nuclear density testing results, additional geotechnical laboratory testing results, etc.), placement volumes, truck count information for DWTM, and an updated survey of the previous year's work area at after the end of the year. Reports will be submitted by the Operator in a timely manner to the Ohio EPA, but no later than March 31st.

3.6.4 Construction Completion Report

Upon completion of beneficially using DWTM material within the quarry, a Construction Completion Report will be prepared to document the work activities. The Construction Completion Report will be submitted by the Operator and will include aspects of the Annual Report, including a final survey of the reclaimed quarry.

4.0 LITERATURE CITED

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Haiker, Bill. 2009. Potentiometric Surface of the Consolidated Aquifers in Ottawa County. Holtz, Robert D.,

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S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S

IN THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S

Benton Township,	:	Case No. 17 CV 064
Plaintiff,	:	(Hon. Bruce Winters)
vs.	:	**AFFIDAVIT OF JOHN TADDONIO**
Rocky Ridge Development, LLC, et al., Defendants.	:	Brian P. Barger (0018908) EASTMAN & SMITH LTD. 100 East Broad Street, Suite 2100 Columbus, Ohio 43215 Telephone: (614) 564-1445 Fax: (614) 280-1777 Email: bpbarger@eastmansmith.com and Barry W. Fissel (0021642) Matthew D. Harper (0059192) EASTMAN & SMITH LTD. One SeaGate, 24th Floor P.O. Box 10032 Toledo, Ohio 43699-0032 Telephone: (419) 241-6000 Fax: (419) 247-1777 Email: bwfissel@eastmansmith.com mdharper@eastmansmith.com Attorneys for Defendant Rocky Ridge Development, LLC

S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S-S

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

I, John Taddonio, being first duly sworn, state as follows:

1. I make this Affidavit based upon my own personal knowledge.

2. I am the Vice President of Defendant Rocky Ridge Development, LLC (**"RRD"**).

3. On January 18, 2017, I participated in an Ohio EPA Storm Water Compliance Inspection of RRD's property located in Benton Township, Ohio. During that meeting, I and representatives of the OEPA discussed certain soil stabilization actions that were necessary to comply with the National Pollutant Discharge Elimination System (**"NPDES"**) permit for RRD's operations on the property. Following that inspection, RRD ordered the materials needed for the soil stabilization. They were delivered to the property on the morning of February 23, 2017. Because the Court issued its Temporary Restraining Order later that same day, RRD did not begin the soil stabilization work.

4. On February 27, 2017, the OEPA issued a Notice of Violation (**"NOV"**) directing RRD to undertake the soil stabilization already discussed and to "provide documentation to OEPA of the actions taken and/or will be taken to resolve the [NOV]" with fourteen (14) days of receipt. If RRD fails to undertake the actions required by the NOV, it faces enforcement action by the OEPA. A true and correct copy of the NOV is attached as **Exhibit 1** to this Affidavit.

5. As it stands, RRD cannot comply with the TRO without violating the NOV and cannot comply with the NOV without violating the TRO.

FURTHER AFFIANT SAYETH NAUGHT.

John Taddonio

Sworn to and subscribed in my presence this 2nd day of March, 2017.

Notary Public
My Commission Expires on: _____

NOTARIAL SEAL
STATE OF OHIO

BRIAN P. BARGER
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.

Ohio Environmental Protection Agency

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

EXHIBIT
tabbies
1

Re: Stansley Industries
Notice of Violation (NOV)
NOV
NPDES
Ottawa County
2IJ00104

February 27, 2017

Mr. Scott Stansley
Stansley Industries, Inc.
3793 Silica Road
Sylvania, Ohio 43560

Subject: Notice of Violation

Dear Mr. Stansley:

On January 18, 2017m Justin Williams and I conducted an Ohio EPA storm water compliance inspection of the Rocky Ridge Development in Graytown, Ohio. We met with Mr. John Taddonio and discussed that the goal of our inspection was to determine your facility's compliance with Ohio's environmental laws and regulations as found in Chapter 6111 of the Ohio Revised Code (ORC) and the terms and conditions of Stansley Industries' National Pollutant Discharge Elimination System (NPDES) permit #2IJ00104*AD, which was issued on November 1, 2015.

Findings

We observed the following violations of Ohio's environmental laws and regulations and the Stansley Industries' permit terms and conditions. In order to bring Stansley Industries into compliance, we recommend promptly addressing these violations within 14 days of receipt of this letter.

1. **ORC Chapter 6111.07 (A):** No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.

   NPDES Permit Terms and Conditions Part II.B.: Soil Stabilization. Stabilization of disturbed areas shall, at a minimum, be initiated in accordance with the time frames specified in the following tables:

Table 1: Permanent Stabilization

Area requiring permanent stabilization	**Time frame to apply erosion controls**
Any areas that will lie dormant for one year or more	Within seven days of the most recent disturbance
Any areas within 50 feet of a surface water of the state and at final grade	Within two days of reaching final grade
Any other areas at final grade	Within seven days of reaching final grade within that area

Table 2: Temporary Stabilization

Area requiring temporary stabilization	**Time frame to apply erosion controls**
Any disturbed areas within 50 feet of a surface water of the state and not at final grade	Within two days of the most recent disturbance if the area will remain idle for more than 14 days
For all construction activities, any disturbed areas that will be dormant for more than 14 days but less than one year, and not within 50 feet of a surface water of the state	Within seven days of the most recent disturbance within the area For residential subdivisions, disturbed areas must be stabilized at least seven days prior to transfer of permit coverage for the individual lot(s).
Disturbed areas that will be idle over winter	Prior to the onset of winter weather

(a) There were numerous areas on the site that were not stabilized and not being actively worked.

(b) **Requested Action:** Stabilize all inactive areas per the above tables. The storm water pollution prevention plan (SWP3) for this site shall have instructions for winter stabilization. The areas of concern include the berms around the ponds where gullies and rills had formed, berms around the area of the former farmland, and any other area that remains dormant for more than 14 days. Areas that had been permanently seeded but do not have 70% or more permanent stabilization shall be temporarily stabilized until permanent stabilization can be utilized.

The area of the former farmland on the southeast corner, the berms on the south side of the site bordering the former farmland, and any other area of the site that drains to the bedrock fissure on the south side of the site, needs to be graded and stabilized as soon as possible.

Conclusion

Ohio EPA requests that Stansley Industries promptly undertake the necessary measures to return to compliance with Ohio's environmental laws and regulations. Within 14 days of receipt of this letter you must provide documentation to Ohio EPA of the actions taken and/or will be taken to resolve the violations cited above. Documentation of steps taken to return to compliance includes but is not limited to written correspondence, updated policies, and photographs, as appropriate and may be submitted via the postal service or electronically to patricia.tebbe@epa.ohio.gov.

Failure to comply with Chapter 6111.07 of the ORC and rules promulgated thereunder may result in an administrative or civil penalty. It is imperative that you return to compliance. If circumstances delay resolution of violations, Stansley Industries is requested to submit written correspondence describing the steps that will be taken by a date certain to attain compliance.

Please note that the submission of any requested information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek administrative or civil penalties as provided in Chapter 6111.09 of the ORC.

Should you have any questions, please contact me at (419) 373-3016 or via email at patricia.tebbe@epa.ohio.gov.

Sincerely,

Patricia A. Tebbe, P.E., MPH, CPESC
Division of Surface Water

/jlm

ec: Scott Sheerin, DSW-CO
Tom Poffenbarger, DSW-NWDO
Justin Williams, DSW-NWDO
Tracking

pc: John Taddonio, Rocky Ridge Development LLC

EXHIBIT G

GARY A. KOHLI
CLERK OF COURTS
OTTAWA COUNTY, OHIO
2017 MAR -3 A 9:46

IN THE COURT OF COMMON PLEAS OF OTTAWA COUNTY, OHIO

BENTON TOWNSHIP,

Plaintiff,

v.

ROCKY RIDGE DEVELOPMENT, LLC, *et al.*,

Defendant.

CASE NO. 2017 CV 064

JUDGE BRUCE WINTERS

MOTION TO DISMISS AND TO DISSOLVE TEMPORARY RESTRAINING ORDER

GORANSON, PARKER & BELLA
BY: Christopher F. Parker (0009338)
405 Madison Ave., Ste. 2200
Toledo, Ohio 43604
(419) 244-9500 -- telephone
(419) 244-9510 -- telecopier
cparker@gpblaw.com – e-mail

COUNSEL FOR DEFENDANT
CUSTOM ECOLOGY OF OHIO, INC.
dba STANSLEY INDUSTRIES, INC.

* * * * *

Now comes Defendant Custom Ecology of Ohio, Inc. dba Stansley Industries, Inc., by and through counsel, and respectfully requests an Order from the Court dismissing Plaintiff's Verified Complaint. Custom Ecology also requests an Order from the Court dissolving the Temporary Restraining Order that was issued on or about February 23, 2017. The grounds in support of this Motion are set forth in the accompanying memorandum.

Respectfully submitted,

Christopher F. Parker

MEMORANDUM

Plaintiff has filed a verified complaint naming Rocky Ridge Development, LLC ("Rocky Ridge") and Stansley Industries, Inc. as named Defendants. Plaintiff seeks to usurp rights that are exclusively vested with the Ohio Environmental Protection Agency (Ohio EPA).

Plaintiff alleges that a Land Application Management Plan ("LAMP") was issued to Stansley Industries, Inc. in November, 2014. Ohio EPA modified the November, 2014 LAMP on February 14, 2017 identifying Rocky Ridge Development, LLC as permittee. It would appear, therefore, based on the allegations in the verified complaint, that Stansley Industries, Inc. is a named defendant only because the 2014 LAMP was issued in its name.

As has been argued by both Rocky Ridge and the Ohio EPA, this matter should be dismissed because the Court lacks subject matter jurisdiction over the issues presented. Subject matter jurisdiction lies exclusively with the Ohio EPA's Environmental Review Appeals Commission. Since Plaintiff has failed to pursue and exhaust its administrative remedies, this matter should be dismissed.

In addition, subject matter jurisdiction is lacking because the issues presented are preempted by State law. *Perry v. Providence Township* (1991), 63 Ohio App.3d 377, 6th Dist. Lucas No. L-90-164. Absent express statutory preemption, the general test for determining whether a general law of the state preempts a local regulation is whether there is a conflict between the two provisions. *Id.*, p. 380. "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Struthers v. Sokol (1923), 108 Ohio St. 263, 140 N.E. 519*, paragraph two of the syllabus; *Fondessy Enterprises, Inc. v. Oregon (1986), 23 Ohio St.3d 213, 23 OBR 372, 492 N.E.2d 797*, paragraph two of the syllabus; *Perry, supra.*

For the reasons presented by Rocky Ridge and by the Ohio EPA in their respective Motions to Dismiss, Custom Ecology of Ohio, Inc. dba Stansley Industries, join in the Motions and respectfully requests an Order from the Court dismissing Plaintiff's Verified Complaint pursuant to Civ. R. 12(B)(1) and Civ. R. 12(B)(6) and dissolving the Temporary Restraining Order pursuant to Civil Rule 65(A).

WHEREFORE, Custom Ecology of Ohio, Inc. dba Stansley Industries respectfully requests an Order from the Court dismissing Plaintiff's Verified Complaint pursuant to Civ. R. 12(B)(1) and Civ. R. 12(B)(6) and dissolving the Temporary Restraining Order pursuant to Civil Rule 65(A).

Respectfully submitted,

Christopher F. Parker

CERTIFICATION

This is to certify that a copy of the foregoing was sent by electronic mail this 3rd day of March, 2017 to Brian P. Barger, Esq. (bpbarger@eastmansmith.com), 100 East Broad St., Suite 2100, Columbus, Ohio 43215 and Matthew D. Harper, Esq. (mdharper@eastmansmith.com) and Barry W. Fissel, Esq. (bwfissel@eastmansmith.com), One Seagate, 24th Floor, P O Box 10032, Toledo, Ohio 43699-0032; Robert B. Casarona, Esq., The Falls Building, 57 East Washington Street, Cleveland, Ohio 44022 (cas@casaronalaw.com) and James Vaneerten, Esq., Ottawa County Prosecuting Attorney, Ottawa County Courthouse, 315 Madison Ave., Suite 205, Port Clinton, Ohio 43452 (prosecuton@co.ottawa.oh.us); and to Molly S. Corey, Esq., Assistant Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Floor, Columbus, Ohio 43215 (molly.corey@ohioattorneygeneral.gov).

Christopher F. Parker

EXHIBIT H

OhioEPA

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

OHIO E.P.A.
NOV 13 2014
ENTERED DIRECTOR'S JOURNAL

NOV 13 2014

Mr. Scott Stansley
Stansley Industries, Inc.
3793 Silica Rd.
Sylvania, OH 43560

Re: Stansley Industries, Inc.
Permit – Short Term
Approval
Beneficial Use
Lucas County
BENU020621

Subject: Stansley Industries, Inc.
LAMP Permit Approval
Beneficial Use of Lime Residuals as General Fill

Effective Date: November 13, 2014

Expiration Date: November 12, 2019

Dear Mr. Stansley:

The Ohio Environmental Protection Agency (Ohio EPA) has reviewed the Land Application Management Plan (LAMP) permit application submitted on August 15, 2014 by Stansley Industries, Inc. (Stansley) at the request of City of Toledo, Collins Water Treatment Facility, pursuant to Chapter 6111 of the Ohio Revised Code (ORC) for the proposed beneficial use of lime residuals in a soil blend as general fill. The submitted LAMP permit application proposes to beneficially use lime residuals as a material to blend with soil for the purpose of increasing elevation and improving drainage.

Pursuant to the authority of the Director under ORC Chapter 6111, this LAMP permit for beneficial use of lime residuals as general fill is approved subject to compliance with all conditions below.

This permit authorizes Stansley to beneficially use lime residuals in a soil blend for general fill in accordance with the LAMP permit application submitted on August 15, 2014. All other beneficial uses must be separately approved by Ohio EPA.

Conditions

1. The Director, or his authorized representative(s), may enter upon the premises of any Stansley properties taking lime residuals for soil blending, at any reasonable time, for the purpose of conducting inspections, collecting samples of soil blends, conducting tests, or examining records or reports pertaining to the soil blending process.

2. Stansley shall use the following blending ratios for soil blends used for general fill: not more than 35% lime residuals with not less than 65% soil.

3. Issuance of this permit does not relieve Stansley of the duty to comply with all applicable federal, state, and local laws, ordinances, and regulations, except as specifically exempted herein.

4. Stansley shall collect and analyze at least one sample per year of lime residuals for beneficial use and shall collect and analyze additional samples if there are substantial changes in the generation process or the raw materials used. For the purposes of this permit, a substantial change in the raw materials is a change which results in higher levels of the constituents in the table in Condition 5 or additional constituents.

   a. The samples collected shall be representative of the approved materials beneficially used for the calendar year.

   b. Stansley shall have the sample(s) analyzed for the constituents listed in the table in Condition 5.

   c. The reported detection limit for the analysis shall be below the limit specified for each constituent in the table in Condition 5.

   d. Stansley shall employ analytical methods that generate constituent results in units consistent with the units in the table in Condition 5.

5. At a minimum, the lime residuals intended for beneficial use shall be analyzed for the constituents specified in the following table. Stansley shall not designate, make available, or distribute for beneficial use any lime residuals that exceed any constituent limit specified in the following table.

Constituents	Total (mg/kg)*
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	100
Zinc (Zn)	2800

* - dry weight basis

6. Ohio EPA reserves the right to add constituents to the table in Condition 5 as it deems necessary.

7. The following shall be maintained by Stansley for a minimum of five years after the completion of the beneficial use of lime residuals authorized by this permit and made available to Ohio EPA upon request:

   a. Records of the annual volume of lime residuals that are beneficially used;

   b. A sampling plan detailing the sampling and analysis as required by Conditions 4 and 5;

   c. All laboratory reports of all analyses of lime residuals.

8. Any records required to be maintained in accordance with Condition 7 shall be provided to the Director upon request.

9. Storage and land application of the lime residuals shall not create a nuisance and shall not adversely affect public safety or health or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that storage or blending of lime residuals is a threat to human health or the environment, then permission to use this material may be revoked upon written notification from the Director. Immediately upon the effective date of any such revocation, Stansley shall cease land application of lime residuals.

10. Stansley shall not cause pollution or cause any lime residuals to cause pollution to any waters of the state and shall only discharge to waters of the state in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state shall be reported to Ohio EPA by calling 1 (800) 282-9378 within 2 hours of discovery.

11. Stansley shall not place lime residuals or the soil blend authorized herein into any waters of the United States, including wetlands, subject to regulation under Sections 401 and/or 404 of the Federal Clean Water Act, or in isolated wetlands subject to regulation under ORC Sections 3745.113 and 6111.02 through 6111.029, without first obtaining any required authorizations from the U.S. Army Corps of Engineers and/or Ohio EPA.

12. The Director shall be notified in writing within seven days if Stansley discovers noncompliance with this LAMP permit.

13. The Director may add, delete, or change any conditions to this LAMP permit to protect human health or the environment

14. Each year, by January 31st, Stansley shall submit a report regarding the beneficial use of the lime residuals for the previous calendar year. This annual report shall include the total amount, in tons, of lime residuals beneficially used and analytical results for any analyses performed.

15. The annual report shall be sent to the following address:

    Ohio EPA - DMWM
    Authorizing Actions and Engineering Unit
    P.O. Box 1049
    Columbus, OH 43216-1049

16. In the annual report, Stansley shall include the following annual certification statement. The certification statement shall be printed out and signed beginning one year after the effective date of this approval and annually thereafter:

    "I certify, under penalty of law, that the information used to determine compliance with the requirements contained in Chapter 6111. of the Ohio Revised Code, and all rules adopted thereunder, for the period beginning (insert date of last certification statement) and ending (insert current certification statement date) was prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

17. This permit to beneficially use lime residuals in a soil blend as general fill shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use lime residuals in a soil blend beyond the above date of expiration, Stansley shall submit such information and forms as are required by Ohio EPA not later than 180 days prior to the above date of expiration.

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 which the Commission, in its discretion, may reduce 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:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

Sincerely,

Craig W. Butler
Director

DH

Attachment: LAMP Permit

cc: Tim Murphy, City of Toledo, Dept. of Utilities
Ryan Gierhart, DSW, NWDO
Elizabeth Wick, DSW, NWDO
Mike Reiser, DMWM, NWDO

Permit-to-Install/Plan Approval Application

FOR AGENCY USE ONLY		
Date Received: / /	Application/Revenue ID:	Organization ID:
Document ID:	Place ID:	Check ID:
Check Date: / /	Check Number:	Check Amount:

1. **Project Name:** City of Toledo, Department of Public Utilities, Division of Water Treatment, Spent Lime Disposal

2. Applicant (see note after signature)

Name: Stansley Industries, Inc.
Mailing Address: 3793 Silica Road
City: Sylvania State: Ohio Zip: 43560
Contact Name: Charles Stansley
Title: President
Phone: 419-841-6960 Fax: 419-843-7939 E-mail : cstansley@stansleyindustries.com

3. Application/Plans Prepared by:

Name: Scott Stansley
Mailing Address: 3793 Silica Road
City: Sylvania State: Ohio Zip: 43560
Contact Name: Scott Stansley
Title: Project Manager
Phone: 419-841-6960 Fax: 419-843-7939 E-mail : sstansley@etransferservices.com

4. Billing Address (if different than Applicant)

Name:
Mailing Address:
City: State: Zip:
Contact Name:
Title:
Phone: ( ) - Fax: ( ) - E-mail :

APPROVED
OHIO ENVIRONMENTAL PROTECTION AGENCY
NOV 13 2014
AS EVIDENCED BY COPY OF LETTER OF APPROVAL HERETO ATTACHED

5. Future Owner (if different than Applicant)

Name:
Mailing Address:
City: State: Zip:
Contact Name:
Title:
Phone: ( ) - Fax: ( ) - E-mail :

6. Project Location

Street Address or Location Description: 600 Collins Park, Toledo, Ohio

County: Lucas Township:

Municipality: City of Toledo Latitude: Longitude:

Method of Determination:

7. Brief Project Description: ** See attached narrative plan **

8. Will one or more acres be disturbed during construction of this project? ☒ Yes ☐ No

If Yes, enter the date the NOI for coverage under the construction storm water NPDES permit was submitted: / / and the date coverage was granted: / /

9. Will wetlands be disturbed during construction of this project? ☐ Yes ☒ No

If Yes, enter the date the 401/404 permit application was submitted: / /

10 a. Is this application part of a combined permit-to-install application? (for example air + water) ☐ Yes ☒ No

b. Has an application for a Class V injection well permit been submitted? ☐ Yes ☐ No ☒ N/A

If Yes, date submitted: / /

11. Compliance Status

a. Will this project connect to a collection/treatment system that has a NPDES permit? ☐ Yes ☒ No

If Yes, list federal and state permit numbers:

OH

b. Is this application filed in compliance with findings and orders, a consent decree, and/or NPDES permit schedule? ☐ Yes ☐ No

If Yes, effective date of the document containing the schedule: / /

12. Compliance with 208 plan

Does the project conform to the 208/201 plan for the area? ☐ Yes ☐ No ☒ N/A

If Yes, has the engineer submitted supporting documentation? ☐ Yes ☐ No

13. Designated Ohio Wild, Scenic, & Recreational Rivers

Is this project located within 1000 feet of a designated wild, scenic, and recreational river? ☐ Yes ☒ No

See http://ohiodnr.com/?TabId=985 for additional information

14. Estimated Project Schedule

Beginning construction date: 07/15/2014 Ending construction date: / / Beginning operation date: / /

15. Project Cost

*Installation/Construction Cost: $ 5000.00 (Mark one): ☐ Actual ☐ Bid ☒ Estimate

Annual Operation/Maintenance Cost (if applicable - this project only): $

Are Water Pollution Control Loan Funds going to be used for this project? ☐ Yes ☒ No

If No, Funding Source:

**This is costs of the treatment/dispersal/collection system that will serve the project*

16. Attachments

The following are included in this application package (check appropriate box(es) and indicate how many copies of each are provided):

☐ Detail Plans		☐ Management Plan	
☐ Soil Evaluation Form		☐ Engineering Report	
☐ Hydrogeologic Site Investigation Report		☒ Engineering Specifications	TTL - attached
☐ Site Evaluation Form		☐ Sewer Authority Letter	
☒ Other (describe):	Analysis - attached	☐ Antidegradation Addendum	
☒ Narrative Plans - attached			

17. Form B / C Submission (check all that apply)

- ☐ Sewer and Pump Station Construction – Form B1
- ☐ Onsite Sewage Treatment Systems – Form B2
- ☐ Wastewater Treatment Plants Less Than 100,000 GPD – Form B3
- ☐ Wastewater Treatment Plants Greater Than or Equal to 100,000 GPD and all Pond Systems – Form B4
- ☐ Industrial Direct Discharge Facility – Form B5
- ☐ Industrial Indirect Discharge Facility – Form B6
- ☐ Underground Storage Tank Remediation – Form B7
- ☐ Holding Tanks – Form B8
- ☐ Industrial Impoundment Ponds – Form B9
- ☒ Land Application Management Plan for Sludge or Waste other than Treated Sewage – Form C1
- ☐ Treated Sewage Land Application Management Plan – Form C2
- ☐ Sewage Holding Tank Management Plan – Form C3

18. Fee Calculations

Permit-to-install (maximum total fee $15,100)	
a. Application fee:	$ 100.00
b. Plan review fee:	$ 100.00
c. Plan review fee (installation/construction cost x .0065):	$
d. Total Fee (a + b + c):	$
Sludge Management Plan Approval*	
a. Application fee:	$ 100.00
b. Plan review fee:	$ 100.00
c. Total fee (a + b):	$ 200.00

** No separate fee is needed for land application*

19. Antidegradation

Is this project subject to the Antidegradation Rule (OAC 3745-1-05)? ☐ Yes ☒ No

If Yes, an antidegradation addendum must be submitted (Note: It applies even if an exclusion and/or waiver is met)

If No, check all that apply:

- ☐ Application with no direct surface water discharge (Projects that do not meet the applicability section of 3745-1-05 (B)1, i.e., onsite sewage treatment systems, sanitary sewer extensions, indirect discharger to PDTW, etc.).
- ☐ Renewal NPDES application or PTI application with no requested increase in loading of currently permitted pollutants.
- ☐ Narrative Plans (Examples: Land Application, General Plans, etc.)

20. Submittals

To be considered complete, this application must include the following unless otherwise directed by Ohio EPA:

- ☐ Four copies of the detail plans including profile and plan views of all sewers (shown on the same sheet), existing (as applicable) and proposed pump station facilities, incorporating all of the details outlined in Section 20.1, 20.2 and 20.3 of *Recommended Standards for Wastewater Facilities*.
- ☐ Two copies of complete technical specifications.
- ☐ Two copies of the Permit-to-Install Application including Form A, pertinent B & C form(s), and the antidegradation addendum *(if applicable)*
- ☐ Fee check payable to "Treasurer, State of Ohio."

21. Signature of the Applicant (see Ohio Administrative Code 3745-42-03)

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision and that all the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are substantial penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

Typed name: Charles Stansley Title: President

Signature: Date: 08/19/2014

NOTE (Who Must Sign):
The person signing as AApplicant@ is not the applicant=s engineer or architect or any other person submitting the Permit-to-Install Application on behalf of the owner. The AApplicant@ should be owner of the facility, business, corporation, company, etc. or the legal responsibly entity. It is not the engineer who prepared the plans.

APPROVED
OHIO ENVIRONMENTAL PROTECTION AGENCY
NOV 13 2014
AS EVIDENCED BY COPY OF
LETTER OF APPROVAL
HERETO ATTACHED

EXHIBIT I

ENTERED DIRECTOR'S JOURNAL

Ohio Environmental Protection Agency

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

RECEIVED
OHIO EPA
2017 FEB 14 AM 10:31
LEGAL OFFICE

February 14, 2017

Mr. Scott Stansley
Mr. Charles Stansley
Stansley Industries, Inc.
3793 Silica Rd.
Sylvania, OH 43560

Mr. John Taddonio
Rocky Ridge Development LLC
3793 Silica Rd.
Sylvania, Ohio 43560

Re: Stansley Industries, Inc.
Permit - Short Term
Approval
Beneficial Use
Lucas County
BENU020621

Subject: Stansley Industries, Inc. and Rocky Ridge Development LLC Modified LAMP Permit Approval for Beneficial Use of DWTM Blend as General Fill

Effective Date: FEBRUARY 14, 2017

Expiration Date: November 12, 2019

Dear Mr. Stansley and Mr. Taddonio:

The Director of the Ohio Environmental Protection Agency issues this Land Application Management Plan ("LAMP") permit to modify the LAMP permit issued to Stansley Industries Inc. on November 13, 2014 ("2014 LAMP Permit"), to amend conditions and to include Rocky Ridge Development LLC as a permittee, to protect human health or the environment.

Terms

1. The Director of the Ohio Environmental Protection Agency (Ohio EPA) has determined that it is necessary to add, delete and change conditions to the 2014 LAMP permit in accordance with condition no. 13 of the 2014 LAMP permit for the proposed beneficial use of drinking water treatment material (DWTM) in a soil blend as general fill, to protect human health or the environment.

2. Drinking water treatment material (DWTM) is defined for purposes of this LAMP permit as follows: "DWTM generated from the City of Toledo, Collins Water Treatment Facility".

3. Drinking water treatment material blend (DWTM blend) is defined as a homogeneous mixture of a ratio of not more than 35% DWTM with not less than 65% soil. A homogeneous mixture is defined as a mixture which has the same uniform appearance and composition throughout.

4. Pursuant to the authority of the Director under ORC Chapter 6111, the modified LAMP permit for beneficial use of DWTM as general fill is approved subject to compliance with all conditions below.

Conditions

1. This LAMP permit is issued to modify and supersede the November 13, 2014 LAMP permit, pursuant to condition no. 13 of the 2014 LAMP permit, to clarify and amend conditions to include Stansley Industries Inc. or Rocky Ridge Development LLC as a LAMP permittee, and protect human health or the environment. This LAMP permit and the conditions specified herein shall be binding upon Stansley Industries, Inc. [hereinafter "Stansley"] and Rocky Ridge Development, LLC [hereinafter "Rocky Ridge"], and their respective agents and successors in interest.

2. This LAMP permit authorizes Stansley or Rocky Ridge to beneficially use DWTM in a soil blend for general fill to increase elevation and improve drainage in existing low lying areas, in accordance with the LAMP permit application submitted on August 15, 2014, and with the conditions contained herein on the Rocky Ridge Property (the "Property") located at 14591 W Toussaint North and 3017 North S.R. 590, Benton Township, Ohio, Ottawa County.

3. Prior to relying upon this LAMP permit for the beneficial use of DWTM blend on any other property than the Property described in condition no. 2 above, Stansley or Rocky Ridge shall notify Ohio EPA in writing, and shall demonstrate to Ohio EPA's satisfaction that the beneficial use of DWTM blend on such other property is capable of satisfying the conditions, siting criteria and isolation distances in this LAMP permit, and obtain written concurrence from Ohio EPA for the storage of DWTM, and for mixing and beneficial use of DWTM blend to increase elevation and improve drainage in existing low lying areas on such Property. Ohio EPA may require the installation of wells in specific locations on such property and ground water monitoring to determine impacts to ground water as a condition to Ohio EPA's written concurrence with any demonstration made pursuant to this condition in lieu of condition no. 21. Upon Ohio EPA's written concurrence with such demonstration required by this LAMP permit, the conditions within this LAMP permit shall apply to such property, and Ohio EPA's concurrence shall be deemed to be incorporated in and made an enforceable part of this LAMP permit.

4. Prior to storing or mixing DWTM, or beneficially using DWTM blend at a location other than the Rocky Ridge property, in addition to obtaining concurrence under condition no. 3, Stansley or Rocky Ridge shall provide a copy of this LAMP permit to the owner of the property where the DWTM will be stored or mixed or where the DWTM blend will be beneficially used; and, Stansley or Rocky Ridge shall obtain written consent from the owner of the property to store, mix or beneficially use DWTM blend on such property, to install wells on such property, and to take any actions necessary to comply with this LAMP permit.

5. Stansley and Rocky Ridge shall not perform excavation and fillling in areas excavated for the purpose of creating low lying areas to fill with DWTM or DWTM blend pursuant to this LAMP permit, including areas where soils are excavated for purposes of blending in accordance with this LAMP permit. Only DWTM generated from the City of Toledo, Collins Water Treatment Facility is eligible for beneficial use under this Permit. All DWTM generated from other sources and all other beneficial uses must be separately approved by Ohio EPA.

6. The Director, or his authorized representative(s), may enter upon the premises of any Stansley or Rocky Ridge properties, the Property described in condition no. 2, or any property receiving DWTM for soil blending in accordance with this LAMP permit, at any reasonable time, for the purpose of conducting inspections, collecting samples of DWTM to analyze the material under the paint filter test, Method 9095B, collecting samples of DWTM blends, including from the area where the DWTM blend has been placed for beneficial use to analyze whether the material meets the homogeneous mixture of a ratio of not more than 35% DWTM with not less than 65% soil, for conducting tests, or examining records or reports pertaining to the soil blending process.

7. Prior to mixing with soil, Stansley or Rocky Ridge shall analyze at least one sample of every 1,200 cubic yards in accordance with the paint filter liquids test, as determined by results obtained from conducting method 9095B in SW-846, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," which is fully incorporated herein as Attachment 1. If the sample does not pass the paint filter liquids test, Stansley or Rocky Ridge shall dry the 1,200 cubic yards, resample, and repeat the process as necessary, prior to mixing with soil. Stansley or Rocky Ridge shall ensure that all DWTM is dried such that it is capable of passing the paint filter liquids test Method 9095B prior to mixing with soil. Rocky Ridge shall maintain a written log to document sampling and analysis of every 1,200 cubic yards of DWTM, and resampling if necessary, and make such log available to Ohio EPA upon request.

8. Stansley or Rocky Ridge shall mix not more than 35% DWTM, which satisfies the requirement of condition No. 7, with not less than 65% soil prior to beneficial use and prior to final placement as a fill to increase elevation and improve drainage. Stansley or Rocky Ridge shall establish protocols for sampling and analyzing the DWTM blend prior to its beneficial use as a fill to increase elevation and improve drainage, in order to evaluate and demonstrate that the final DWTM blend meets the homogeneous mixture of not more than 35% DWTM and not less than 65% soil blend criterion of this LAMP permit.

9. Stansley or Rocky Ridge shall identify a separate designated mixing area to be used for drying (as necessary) the DWTM, and mixing the not more than 35% DWTM with not less than 65% soils, which shall be separate from the area of final placement of DWTM Blend. Stansley or Rocky Ridge shall provide prior notice on a plan view drawing to Ohio EPA of a separate designated mixing area for any mixing of DWTM with soil in accordance with this LAMP permit.

10. Notwithstanding condition No. 9, Stansley or Rocky Ridge shall not be required to designate a separate area for mixing 35,000 cubic yards or less of DWTM mixed and placed after the effective date of this LAMP permit in the L-shaped area surrounded by berms and located immediately south of the quarry on the Property ("Hereinafter Area L") at a ratio of not more than 35% DWTM, capable of passing the paint filter test prior to mixing, to not less than 65% soils. Stansley or Rocky Ridge shall document, in a log available to Ohio EPA upon request, the quantity of DWTM received after the effective date of this Modified LAMP permit into Area L, and shall notify Ohio EPA within seven days of having placed and mixed 35,000 cubic yards of DWTM with not less than 65% or 65,000 cubic yards of soils into Area L. Upon the effective date of this Modified LAMP permit, and after Stansley or Rocky Ridge mixes 35,000 cubic yards of DWTM with not less than 65% or 65,000 cubic yards of soils in Area L, the exception from the condition to designate a separate mixing area pursuant to this LAMP permit shall terminate. This temporary exception from the obligation to designate a separate mixing area in condition No. 9, shall not be construed to relieve Stansley or Rocky Ridge from complying with any condition of this LAMP permit.

11. Prior to mixing, Stansley or Rocky Ridge shall collect and analyze at least one sample per year of DWTM intended for beneficial use and shall collect and analyze additional samples if there are substantial changes in the generation process or the raw materials used. For the purposes of this LAMP permit, a substantial change in the raw materials is a change which results in higher levels of the constituents in Table 1 or additional constituents.
    a. The samples collected shall be representative of the approved materials beneficially used for the calendar year.
    b. Stansley or Rocky Ridge shall have the sample(s) analyzed for the constituents listed in Table 1.
    c. The reported detection limit for the analysis shall be below the limit specified for each constituent in Table 1.
    d. Stansley or Rocky Ridge shall employ analytical methods that generate constituent results in units consistent with the units in Table 1.

12. At a minimum, the DWTM intended for beneficial use shall be analyzed for the constituents specified in the Table 1. Stansley or Rocky Ridge shall not designate, make available, or beneficially use any DWTM that exceeds any constituent limit specified in Table 1.

Table 1

Constituents	Total (mg/kg)*
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	100
Zinc (Zn)	2800

* - dry weight basis

Ohio EPA reserves the right to add constituents to Table 1 as it deems necessary to protect human health or the environment, without modifying this LAMP permit, by providing 30 days notice to Stansley and Rocky Ridge.

13. The following shall be maintained by Stansley or Rocky Ridge for a minimum of five years after the placement of DWTM blend on the property for beneficial use authorized by this permit and made available to Ohio EPA upon request:

    a. Records of the annual volume of DWTM that are beneficially used on the specific property;
    b. A sampling plan detailing the sampling and analysis as required by conditions no. 11 and no. 12;
    c. All laboratory reports of all analyses of DWTM;
    d. Records documenting blending ratios.

14. Stansley and Rocky Ridge shall use Best Management Practices when storing, mixing, and beneficially using DWTM. All activities shall be accomplished in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including but not limited to the control of air pollution, leachate, and storm water run-on and run-off and protection of ground water and surface water. The Best Management Practices shall include, at a minimum, the following:

    a. Beneficial use, storage and mixing locations shall be at least 300 feet from wells and surface waters used for drinking water or watering livestock;
    b. Beneficial use, storage and mixing of DWTM shall be at least 100 feet from other surface waters of the state as defined in ORC Section 6111.01(H);
    c. Stansley or Rocky Ridge shall take necessary measures to create surface water diversions to catch any solids in runoff and to prevent run-on to the mixing or storage areas, and obtain any necessary ORC Chapter 6111 permits, NPDES permits, PTIs, storm water permits, and underground injection requirements;
    d. Stansley or Rocky Ridge shall take measures to control fugitive dust and other air emissions that may result from activities authorized through this LAMP permit and exemption.

15. Transportation, Storage, mixing and beneficial use of the DWTM blend shall not create a nuisance and shall not adversely affect public safety or health or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that storage, mixing or beneficial use of DWTM or DWTM blend is a threat to human health or the environment, then this LAMP permit may be revoked upon written notification from the Director. Immediately upon the effective date of any such revocation, Stansley and Rocky Ridge shall cease beneficial use of the DWTM.

16. Stansley or Rocky Ridge shall not place or cause to be placed for storage, mixing or beneficial use any DWTM or DWTM blend within a sand and gravel pit, a limestone or sandstone quarry, a drinking water source protection area with less than ten feet of low permeable clayey glacial till, a drinking water source protection area that has been determined to be highly susceptible to contamination or a one hundred gallon-per-minute aquifer with less than ten feet of low permeable clayey glacial till.

17. Stansley or Rocky Ridge shall not cause pollution or place or cause to be placed any DWTM or DWTM blend in a location where it causes pollution to any waters of the state, except in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state shall be reported to Ohio EPA by calling 1 (800) 282-9378 within 2 hours of discovery.

18. Stansley and Rocky Ridge shall not place DWTM or the DWTM blend authorized herein into any waters of the United States, including wetlands, subject to regulation under Sections 401 and/or 404 of the Federal Clean Water Act, or in isolated wetlands subject to regulation under ORC Sections 3745.113 and 6111.02 through 6111.029, without first obtaining any required authorizations from the U.S. Army Corps of Engineers and/or Ohio EPA. Stansley and Rocky Ridge shall comply with all applicable provisions of the Underground Injection Control Program, pursuant to Chapter 3745-34 of the Ohio Administrative Code.

19. Stansley or Rocky Ridge shall maintain the isolation distances listed in Table 2 for storage, mixing areas and beneficial use of DWTM or DWTM blend.

Table 2

Isolation distance requirement	To be maintained from
5'	Bedrock
100'	Surface waters of the State
300'	A sinkhole or a UIC Class V drainage well
300'	An occupied structure
300'	A private, potable water source
1000'	A medical care facility

20. In addition to the isolation distances requirements in Table 2, Stansley or Rocky Ridge shall not store, mix or beneficially use DWTM or DWTM blend within the following areas pertaining to public water systems:

    a. Within the sanitary isolation distance a public water system must maintain for a drinking water supply well as established in rule 3745-9-04 of the Administrative Code;
    b. Within the following areas defined in Table 3.

Table 3

Type of public water system	Setback
Community or non-transient, non-community public water system	A drinking water source protection area with less than ten feet of low permeable clayey glacial till or a drinking water source protection area that has been determined to be highly susceptible to contamination.
Transient, non-community public water system using ground water	The drinking water source protection area with less than ten feet of low permeable clayey glacial till or three hundred feet from the water supply well which ever distance is greater.

21. Stansley or Rocky Ridge shall comply with the following provisions regarding Ground Water Monitoring at the property located at 14591 W Toussaint North, Graytown,Ohio:

    a. Within 60 days of these conditions being issued, Stansley or Rocky Ridge shall install at least one ground water monitoring well northwest of well OW-3 at the Rocky Ridge property located at 14591 W Toussaint North, Graytown, Ohio, north of the wetland at the southeast corner of the quarry lake for the purpose of evaluating potential impacts to ground water from recent beneficial use activity conducted at or near the bedrock surface in the southern part of the facility.

    The monitoring well must be constructed the same as observation wells OW-1, OW-2, OW-3, and OW-4 with a screen length of 80 to 100 feet and a total depth of at least 10 feet below the lowest excavated elevation of the adjacent quarry. The well must be properly installed and developed in accordance with Ohio EPA's Technical Guidance Manual for Hydrogeologic Investigation and Ground Water Monitoring prior to sampling and in a manner that will provide a representative sample of ground water.

    b. Sampling and analysis methodology shall be provided in a plan to be submitted to Ohio EPA prior to sampling the well. The sampling and analysis plan shall be consistent with Ohio EPA's Technical Guidance Manual for Hydrogeologic Investigation and Ground Water Monitoring and provide for the collection of representative ground water samples from all monitoring wells sampled as part of these conditions. Samples shall be withdrawn from the wells within 10 feet of the water table. Samples must be analyzed for the parameters in Table 4, including analysis for total metals for metallic/metalloid cations:

Table 4

Parameters		
Alkalinity	Lead	Potassium
Ammonia	Magnesium	Sodium
Arsenic	Manganese	Specific Conductance
Barium	Nickel	Sulfate
Calcium	Nitrate-Nitrite	Temperature
Chloride	Oxidation-Reduction Potential	Total Dissolved Solids
Dissolved Oxygen	pH	Turbidity
Iron	Phosphorus	

c. Ground water samples shall be obtained from the well installed as part of condition no. 21.a. as well as the four observation wells (OW-1, OW-2, OW-3 and OW-4) within 30 days of constructing the monitoring well installed as part of condition no. 21.a. The results from the analysis of any ground water samples shall be submitted to Ohio EPA within 75 days of the samples being collected. Observation wells OW-1, OW-2, OW-3, OW-4 and the well installed as part of condition no. 21.a. shall be sampled semi-annually for two years beginning with the first sample withdrawn as part of this condition and then annually thereafter until released from this obligation by the Director. The samples shall be analyzed for the parameters in Table 4, including analysis for total metals for metallic/metalloid cations.

22. The Director may order an assessment of the ground water quality and corrective actions if the director determines that ground water quality may be impacted by activities approved under this LAMP permit.

23. The Director may add, delete, or change any conditions to this LAMP permit to protect human health or the environment. Upon Ohio EPA's written concurrence with any plan required by this LAMP permit, the plan shall be deemed to be incorporated in and made an enforceable part of this LAMP permit.

24. Each year, by January 31st, Stansley or Rocky Ridge shall submit a report identifying the beneficial use of the DWTM Blend for the previous calendar year and estimated future use. This annual report shall include the following:

a. Total amount, in tons, of DWTM beneficially used the previous calendar year, and location of the beneficial use of such quantity of DWTM Blend;
b. Analytical results for any analyses performed the previous calendar year;
c. Total amount, in tons, of DWTM stored on the Property at the time of the annual report;
d. An estimate, in tons, of the amount of stored DWTM and DWTM Blend expected to be used the following calendar year on the property;

e. A certification statement. The certification statement shall include the following language, and be signed by an authorized representative of Stansley Industries, Inc. and Rocky Ridge Development LLC:

"I certify, under penalty of law, that the information used to determine compliance with the requirements contained in Chapter 6111. of the Ohio Revised Code, and all rules adopted thereunder, for the period beginning (insert date of last certification statement) and ending (insert current certification statement date) was prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

The annual report shall be sent to the following address:

Ohio EPA - DMWM
Beneficial Use Unit
P.O. Box 1049
Columbus, OH 43216-1049

Stansley or Rocky Ridge shall not store a quantity of DWTM or DWTM blend at any property that exceeds the estimated projected amount in the annual report submitted for that property in accordance with this condition.

25. The Director shall be notified in writing within seven days if Stansley or Rocky Ridge discovers noncompliance with this LAMP permit. Issuance of this LAMP permit does not relieve Stansley or Rocky Ridge of the duty to comply with all applicable federal, state, and local laws, ordinances.

26. This permit to beneficially use DWTM in a soil blend as general fill shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use DWTM in a soil blend beyond the above date of expiration, Stansley or Rocky Ridge shall submit such information and forms as are required by Ohio EPA not later than 180 days prior to the above date of expiration.

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 which the Commission, in its discretion, may reduce 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:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

Sincerely,

Craig W. Butler
Director

cc: City of Toledo, Dept. of Utilities
Elizabeth Wick, DSW, NWDO
Mike Reiser, DMWM, NWDO
Shannon Nabors, Chief, NWDO

METHOD 9095B

PAINT FILTER LIQUIDS TEST

1.0 SCOPE AND APPLICATION

1.1 This method is used to determine the presence of free liquids in a representative sample of waste.

1.2 The method is used to determine compliance with 40 CFR 264.314 and 265.314.

2.0 SUMMARY OF METHOD

2.1 A predetermined amount of material is placed in a paint filter. If any portion of the material passes through and drops from the filter within the 5-min test period, the material is deemed to contain free liquids.

3.0 INTERFERENCES

3.1 Filter media were observed to separate from the filter cone on exposure to alkaline materials. This development causes no problem if the sample is not disturbed.

3.2 Temperature can affect the test results if the test is performed below the freezing point of any liquid in the sample. Tests must be performed above the freezing point and can, but are not required to, exceed room temperature of 25 °C.

4.0 APPARATUS AND MATERIALS

4.1 Conical paint filter -- Mesh number 60 +/- 5% (fine meshed size). Available at local paint stores such as Sherwin-Williams and Glidden.

4.2 Glass funnel -- If the paint filter, with the waste, cannot sustain its weight on the ring stand, then a fluted glass funnel or glass funnel with a mouth large enough to allow at least 1 in. of the filter mesh to protrude should be used to support the filter. The funnel should be fluted or have a large open mouth in order to support the paint filter yet not interfere with the movement, to the graduated cylinder, of the liquid that passes through the filter mesh.

4.3 Ring stand and ring, or tripod.

4.4 Graduated cylinder or beaker -- 100-mL.

5.0 REAGENTS

5.1 None.

6.0 SAMPLE COLLECTION, PRESERVATION, AND HANDLING

A 100-mL or 100-g representative sample is required for the test. If it is not possible to obtain a sample of 100 mL or 100 g that is sufficiently representative of the waste, the analyst may use larger size samples in multiples of 100 mL or 100 g, i.e., 200, 300, 400 mL or g. However, when larger samples are used, analysts shall divide the sample into 100-mL or 100-g portions and test each portion separately. If any portion contains free liquids, the entire sample is considered to have free liquids. If the sample is measured volumetrically, then it should lack major air spaces or voids.

7.0 PROCEDURE

7.1 Assemble test apparatus as shown in Figure 1.

7.2 Place sample in the filter. A funnel may be used to provide support for the paint filter. If the sample is of such light bulk density that it overflows the filter, then the sides of the filter can be extended upward by taping filter paper to the inside of the filter and above the mesh. Settling the sample into the paint filter may be facilitated by lightly tapping the side of the filter as it is being filled.

7.3 In order to assure uniformity and standardization of the test, material such as sorbent pads or pillows which do not conform to the shape of the paint filter should be cut into small pieces and poured into the filter. Sample size reduction may be accomplished by cutting the sorbent material with scissors, shears, a knife, or other such device so as to preserve as much of the original integrity of the sorbent fabric as possible. Sorbents enclosed in a fabric should be mixed with the resultant fabric pieces. The particles to be tested should be reduced smaller than 1 cm (i.e., should be capable of passing through a 9.5 mm (0.375 inch) standard sieve). Grinding sorbent materials should be avoided as this may destroy the integrity of the sorbent and produce many "fine particles" which would normally not be present.

7.4 For brittle materials larger than 1 cm that do not conform to the filter, light crushing to reduce oversize particles is acceptable if it is not practical to cut the material. Materials such as clay, silica gel, and some polymers may fall into this category.

7.5 Allow sample to drain for 5 min into the graduated cylinder.

7.6 If any portion of the test material collects in the graduated cylinder in the 5-min period, then the material is deemed to contain free liquids for purposes of 40 CFR 264.314 and 265.314.

8.0 QUALITY CONTROL

8.1 Duplicate samples should be analyzed on a routine basis.

9.0 METHOD PERFORMANCE

9.1 No data provided.

10.0 REFERENCES

10.1 None provided.

FIGURE 1
PAINT FILTER TEST APPARATUS

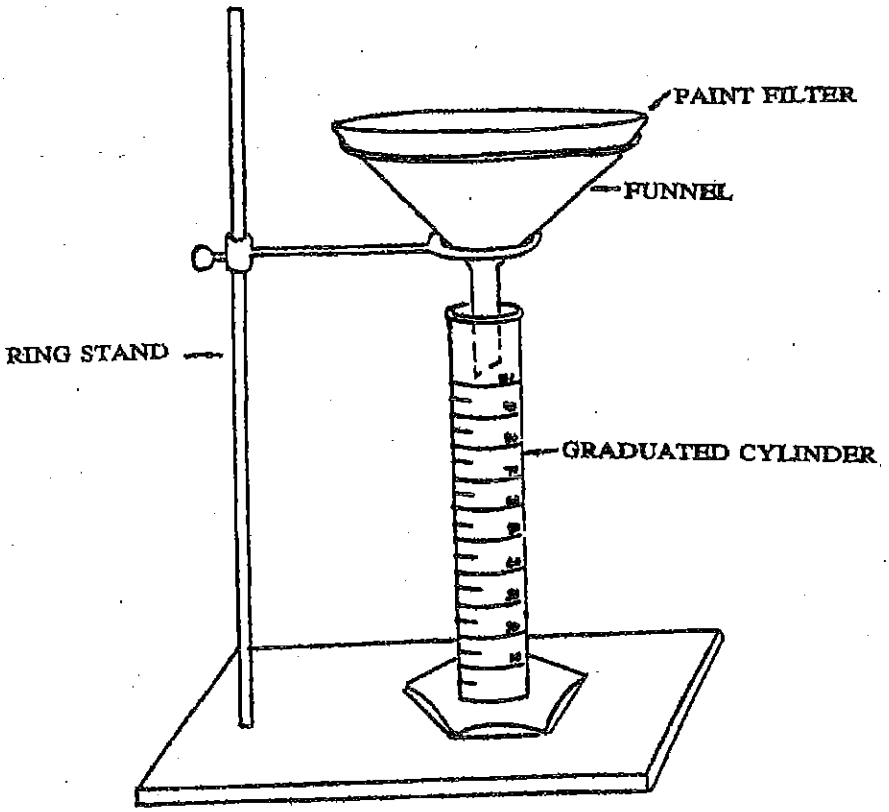
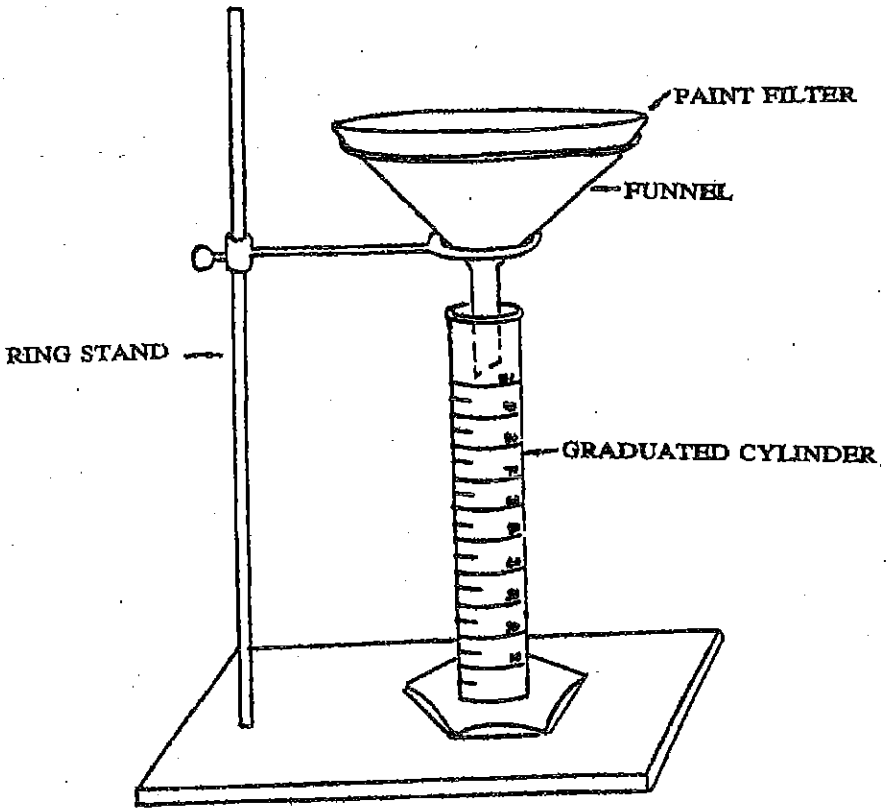


FIGURE 1
PAINT FILTER TEST APPARATUS



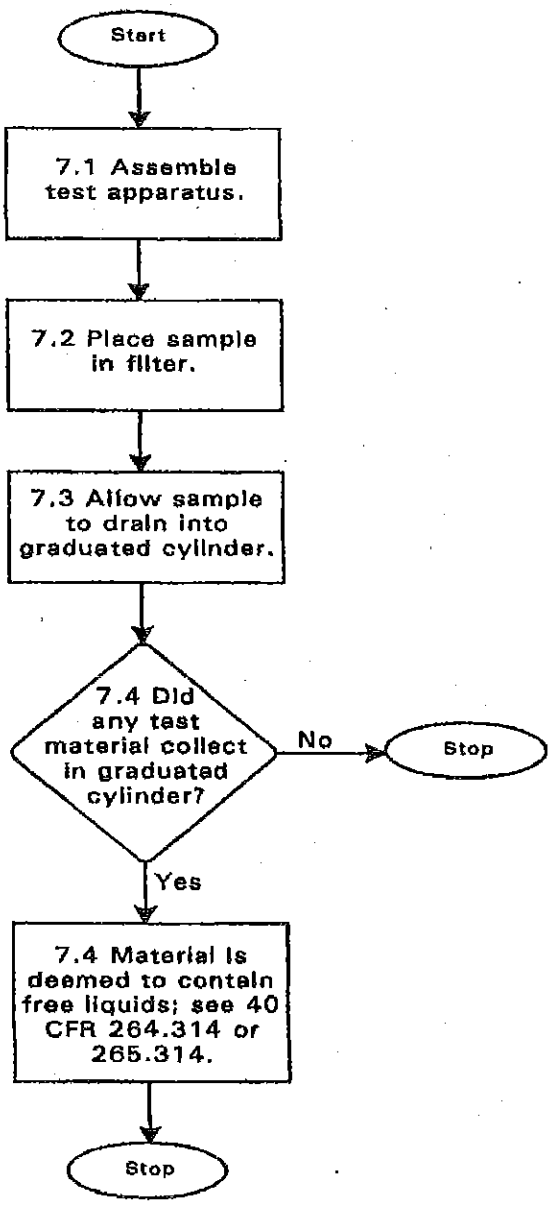

Start
7.1 Assemble test apparatus.
7.2 Place sample in filter.
7.3 Allow sample to drain into graduated cylinder.
7.4 Did any test material collect in graduated cylinder?
No
Stop
Yes
7.4 Material is deemed to contain free liquids; see 40 CFR 264.314 or 265.314.
Stop

EXHIBIT J

ATTACHMENT A

INTEGRATED ALTERNATIVE WASTE MANAGEMENT PLAN FOR ROCKY RIDGE QUARRY

FOR THE:
ROCKY RIDGE QUARRY
14591 W TOUSSAINT NORTH
GRAYTOWN, OHIO 43432

PREPARED FOR:
ROCKY RIDGE DEVELOPMENT LLC
3793 SILICA ROAD
SYLVANIA, OHIO 43560

PREPARED BY:
HULL & ASSOCIATES, INC.
219 S ERIE STREET
TOLEDO, OHIO 43604

REVISED FEBRUARY 2017

HULL

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1.0 INTRODUCTION

1.1 Site Background

Rocky Ridge Quarry (Site) is located at 14591 W. Toussaint North in Graytown, Ottawa County, Ohio, as shown in Figure 1. Ottawa County is approximately 270 square miles and is bounded by Lucas, Wood, and Sandusky Counties and Lake Erie. Land use of the surrounding property is primarily agricultural with residential housing bordering the south of the Site. The geologic setting in Ottawa County is mainly comprised of unconsolidated glacial and lake deposits overlaying a sequence of flat-lying sedimentary rocks. The county is located in the flat-lying Eastern Lake Plains section of the Central Lowlands physiographic region, which is characterized by lake bed sediments deposited by a series of Pleistocene-aged lakes of glacial origin. Topography is nearly level to gently sloping and barely above Lake Erie water levels (Ohio Department of Natural Resources [ODNR], 1994).

The thick sequence of carbonate bedrock from the Devonian and Silurian periods comprises a vast regional aquifer that serves as primary source of groundwater for many counties in Northwest Ohio. Ottawa County lies near the northeastern corner of this regional aquifer (ODNR, 1994). The regional carbonate aquifer, which underlies all of Ottawa County and served as a source of groundwater for much of the rural population, is buried by unconsolidated glacial deposits. As discussed in Client-Confidential ODNR files for the Site "ODNR Report Number 48 – Northwest Ohio Test Drilling for Test Well P-12 (ODNR, 1969) indicates that the test well extends through 38 feet of overburden, 38 feet of Greenfield Dolomite, and 284 feet of Lockport Dolomite. Accounting for an average dip of 17 feet per mile, the base of these water bearing bedrock formations would be approximately 193 feet above mean sea level (AMSL)". ODNR Test Well P-12 is located approximately 2.9 miles southwest of the Site. At this elevation approximately 250 feet of water bearing bedrock exists below the approximate final elevation of the quarry floor at the Rock Ridge Site.

Groundwater within the carbonate aquifer occurs in a network of interconnected fractures, bedding planes, and solution channels. Potentiometric maps for most of Ottawa County shows a general northeastward trending slope, indicating regional groundwater flow from sources of recharge in northern Ohio towards zones of discharge along Lake Erie (Schmidt, 1986).

1.2 Project Overview

Rocky Ridge Development, LLC (Rocky Ridge), acquired the former StoneCo Quarry near Rocky Ridge in 2015 and acquired an additional contiguous 138 acres of agricultural land in February 2016 to allow for borrow soil areas and agricultural test plots to be developed in partnership with various universities. Hull & Associates, inc. (Hull) is assisting Rocky Ridge Development, LLC to proactively seek solutions to help complete

a quarry reclamation in accordance with ODNR's quarry closure and reclamation requirements for a portion of the 35-acre excavation area, the 5-acre disturbed upland area, and possibly integrate a reclamation/habitat restoration project into the overall site stabilization plan.

Rocky Ridge plans to receive City of Toledo (COT) Drinking Water Treatment Material (DWTM) from the lagoons at the Collins Park Treatment Facility at the Site. The DWTM will be blended with native soils and beneficially used as controlled fill within the footprint of the former mine. DWTM will be transported from the COT Collins Park Treatment Facility to the Site, where it is planned to be blended by volume with conventional construction equipment, and placed on-Site in accordance with this IAWMP and applicable Ohio EPA approvals. In order to ensure proper placement of embankment/fill, representative samples of the soils and DWTM were collected by Rocky Ridge and subject to geotechnical laboratory testing (see Appendix G). Additionally, environmental testing of these materials was performed and the results are summarized in Section 2.2. The results of the laboratory-based analysis were used to establish proposed construction methods (e.g., optimal blends for the DWTM and soil blend, lift thicknesses, material preparation for placement and compactability, etc.) to be followed during placement of the material at the Site.

Rocky Ridge has 40+ years of experience in the environmental and aggregate industry in northwest Ohio. Rocky Ridge believes that reclaiming old quarries is one of the best practices to manage DWTM and they look forward to being an active ally in material management and hope to help create win-win solutions for managing on-site soils, DWTM, and reclaiming quarries.

2.0 GENERATOR EFFORTS TOWARDS WASTE MINIMIZATION AND RECYCLING

2.1 General

Rocky Ridge is currently utilizing DWTM from the City of Toledo water treatment lagoons that would otherwise require disposal. As a result, the current use of DWTM as part of the approved Land Application Management Plan (LAMP) and the proposed beneficial use of Blended Fill (DWTM/soil) to fill the quarry will utilize materials that would otherwise require disposal. No byproducts or coproducts are generated as part of the proposed activities within this IAWMP application at the Site, with the exception of stormwater and contact water, which will need to be covered under a National Pollution Discharge Elimination System (NPDES) permit. The NPDES permit will be for final effluent discharge from a surface water detention pond within the quarry to Packer Creek. The current permit is effective November 1, 2015 and expires October 31, 2020. The current permit requires the monthly monitoring/reporting of pH and total suspended solids (TSS), and a 24-hr discharge volume. The pH must be between 6.5 and 9.0 and the TSS cannot exceed 30 mg/L monthly average and a daily maximum of 45 mg/L. Additionally, the TSS loading cannot exceed 164 kg/day on a monthly basis and cannot exceed a daily maximum of 246 kg/day.

Section G of the current NPDES permit states that the current permit covers construction activities including any earth disturbance, including clearing, grading, excavating, grubbing and/or filling, that disturb one acre or more of total land. The permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided they comply with the conditions of the permit.

Per a discussion with Ohio EPA on January 27, 2017, a modification to the current NPDES permit will be required to cover activities anticipated under the IAWMP, which will include coverage for the management of water during quarry dewatering, stormwater runoff, and also surface water runoff that comes into contact with DWTM and/or soil/DWTM blend (i.e., contact water).

2.2 Hydrogeological Characterization

Rocky Ridge began full dewatering activities in January 2016. A pump was utilized to move water at a rate of 1.4 to 2.8 million gallons per day, 24 hours a day through April 2016. In April 2016 the water level was dropped to the point that the upper shelf of the former quarry was exposed, leaving only the deeper end of the former quarry with water remaining. From April 2016 to present, "maintenance" dewatering activities have taken place. To maintain the desired water level, the pump is only operated when the water level approaches the upper shelf of the former quarry.

Four observation wells (OW) (OW-1, OW-2, OW-3 and OW-4) were installed at the Site in 2016 to monitor the groundwater elevation and for collection of groundwater samples. The OWs were installed to depths ranging from 473 feet to 484 amsl. At each OW, the screen zone included top of bedrock to the well total depth. Boring logs with well construction information for the OWs are included in Appendix H-1. Conceptual geologic cross-sections are also provided in Figures 3A and 3B. Ground surface elevations for the ODNR well locations were obtained using LiDAR data (dated March/May 2006) acquired through the Ohio Statewide Imagery Program. Using information from the on-site OWs and publicly available ODNR well logs (included in Appendix H-4), a top of bedrock map was also created and is included in Figure 4. At the request of the Ohio EPA, additional hydrogeologic testing will be completed at the Site to determine both yield and hydraulic conductivity at the Site, in 10-foor intervals to a depth of 10 feet below the base elevation of the quarry. A plan to conduct additional hydrogeologic testing is included in Appendix I. The information obtained will be used to supplement the hydrogeological characterization included in the IAWMP. Existing plans and cross-sections will be revised to incorporate the deep boring locations. Copies of the boring logs and all generated data will be included in the revised IAWMP.

Chemical analysis of the on-site observation wells is discussed in Section 2.3.3.3.

2.2.1 Hydrogeological Modeling

To determine the potential water table drawdown associated with mined area dewatering operations conducted at the Site, Hull subcontracted In Aquas Veritas to construct and evaluate a computer-based numerical simulation of the Site and its surrounding area. The simulation of the projected groundwater depression, and subsequent rebound, was conducted using Waterloo Hydrogeologic's Visual MODFLOW (version 4.3). Visual MODFLOW is a well-known three-dimensional groundwater flow model that uses code originally developed by the USGS (MODFLOW). MODFLOW is a finite-difference groundwater flow model, which can accommodate anisotropic, heterogeneous aquifers in two or three-dimensional domains. The model allows transient flow simulations, and can handle confined, semi-confined, or unconfined conditions under active pumping or variable natural flow regimes. The methodology and detailed discussion is included in the Hydrogeological Model Report, provided in Appendix B-2.

The model was used to estimate the time needed to completely dewater the mined area under existing pumping rates as well as estimate the total drawdown in the area of the mined area under continued dewatering activities. In order to estimate the time needed to dewater the mined area, the model was run until the modeled recovery well ran dry. This occurred after approximately 280 model days. Based on the model, the rebound of the water table to background conditions will take several years to complete. Initial rebound of the water table will be relatively rapid due to the significant head difference between the surrounding aquifer and the mined area floor. As the external and internal head values become more similar,

the rate of rebound will be reduced. The model suggests that full background conditions will be achieved within approximately 5 years, although 75% of background should be reached within approximately one year at the mined area location.

In order to further characterize aquifer hydraulic conductivity at the above-referenced site, slug tests were conducted in four observation wells, OW-1, OW-2, OW-3 and OW-4, located in the immediate vicinity of the Rocky Ridge quarry, on 10/21/2016. Four slug-out tests, per well, were conducted using OW-1, OW-2 and OW-4, and three slug-out tests were conducted using OW-3. Water levels were constantly monitored during the testing to ensure that background water table elevation levels were re-established prior to conducting the next slug test. While data were recorded during the slug-in intervals of the tests, the data returned were insufficient for subsequent reduction.

Data analysis was conducted using Excel-based spreadsheet analytical software generated by the USGS (Halford and Kuniansky, 2002) using the Bouwer and Rice method. The results from the slug tests were very consistent across all four observation wells, returning hydraulic conductivity (K) values ranging from a low of 3.2 feet (ft.)/day to a high of 4.5 ft./day.

The average K value of these tests, 3.84 ft./day, is nearly identical to the K value obtained through previous groundwater modeling (i.e. 3.75 ft./day) which calibrated the aquifer's hydraulic conductivity to drawdown vs. time data measured in the quarry during dewatering activities. The slug test evaluation is included in Appendix B-2. Well logs are provided in Appendix H-1.

2.3 Description of Chemical and Physical Characteristics

Rocky Ridge coordinated the DWTM and blend sampling and analysis approach with Ohio EPA prior to implementation. Additional sampling was coordinated with Ohio EPA during the IAWMP application review process. Lagoon and on-site soil sampling was completed between April 7, 2016 and April 26, 2016. A DWTM Field Sample and Analysis Plan (FSAP) was prepared to guide Rocky Ridge with sampling methods. The DWTM FSAP is provided in Appendix A. The FSAP proposed sampling all three lagoons, however based on field conditions only Lagoons D and E were sampled. The laboratory reports are included in Appendix B-1 and results are summarized in this section. Totals analyses were completed on DWTM and DWTM/soil blends and Synthetic Precipitation Leaching Procedure (SPLP) was completed on DWTM/soil blends. On-site well monitoring and slug testing was completed in October 2016.

Three composite samples of DWTM were collected from three locations in Lagoon D and Lagoon E, for a total of six (6) samples. Once the analytical laboratory sample jars were filled, remaining DWTM from each sample location was composited per lagoon such that there were at least five (5) 5-gallon buckets per

lagoon to be shipped to the geotechnical laboratory for blending with soil. Representative samples were collected and homogenized prior to shipping to the geotechnical laboratory. Additionally, four (4) locations of on-site native soils were sampled from Rocky Ridge and shipped to the geotechnical laboratory for use in creating blends of DWTM and soil.

Chemical samples were shipped to ALS Laboratory and analyzed for various total constituents including metals, polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyl (PCBs), and organics.
Hull's geotechnical laboratory received and processed the native soil and DWTM samples collected by Rocky Ridge. Moisture content as-received by the laboratory (ASTM D2216), liquid and plastic limits (Atterbergs, ASTM D4318), and grain-size analysis (ASTM D422, AASHTO T88) was performed on each native soil sample to classify them according to the United Soils Classification System (USCS).

Totals data for the DWTM Lagoon and soil/DWTM blend sample data were compared to:

- Ohio Voluntary Action Program (VAP) Residential Land Use
- Ohio VAP Generic Leach-Based Soil Values for Soil Class III for source ≥1/2 acre
- USEPA Region 9 Regional Screening Levels (RSL) Direct Contact Residential RSL
- USEPA Region 9 Protection of Groundwater Resident Soil to Groundwater Soil Screening Level (SSL) – Maximum Contaminant Level (MCL)
- USEPA Region 9 Protection of Groundwater Resident Soil to Groundwater Soil Screening Level (SSL) – Risk-Based Level

In addition, select total metal results were compared to the published background metal information for Lucas County, as there is no background study for Ottawa County.

SPLP data for the soil/DWTM blend sample data were compared to the following:

- 2014 VAP Generic Unrestricted Potable Use Standard
- USEPA May 2016 RSLs Protection of Tapwater THQ=1.0
- USEPA May 2016 RSLs Protection of Tapwater THQ=0.1
- Primary and secondary drinking water standards

On-Site groundwater and quarry water data were compared to the following:

- 2014 VAP Generic Unrestricted Potable Use Standard
- USEPA May 2016 RSLs Protection of Tapwater THQ=1.0

- USEPA May 2016 RSLs Protection of Tapwater THQ=0.1
- Primary and secondary drinking water standards

In addition to the above standards/screening levels, on-site groundwater and quarry water data were compared to the Soil/DWTM SPLP results and the Ohio EPA Elmore Water Works Ambient Groundwater Data (1987-2015 Average)[1].

2.3.1 DWTM Characterization

Chemical characterization of the DWTM within Lagoon D and E was completed to demonstrate the suitability of the material for the proposed project. Totals analyses were completed and the most "conservative" sample identified. This sample was then used to create soil/DWTM blends to represent possible soil/DWTM combinations.

Table 1 presents the chemical results of the lagoon DWTM samples. No parameters from the DWTM samples exceeded the Ohio VAP standards. Of the 15 metals tested, five metals exceeded one or more of the USEPA Region 9 levels, however all but one metal (selenium) were below background for Lucas County. There is no established background concentration for selenium in Lucas County. Of the 53 PAHs analyzed, Lagoon E had six PAHs that exceeded one or more USEPA Region 9 levels. Sample E-2 was determined to be the most conservative DWTM sample based on the COCs and concentrations present and therefore was used to create the soil/DWTM blends, as discussed in Section 2.3.3.

2.3.2 On-Site Soil Characterization

On-Site soils were also sampled at Rocky Ridge from four (4) locations within the proposed borrow area and geotechnical analyses completed. No chemical analyses were completed on the native on-site soils; however, the geotechnical results were used to select one on-site sample to use to create the blends along with the most conservative DWTM sample.

The four native on-Site soil samples tested can be described as a lean clay with sand or a lean clay and classified with the USCS group symbol of "CL". Different percentages of soil and DWTM were blended and subject to Standard Proctor testing to determine moisture-density relationships to use during compaction quality assurance control testing. As expected, the maximum dry density decreased, with an increasing

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1 http://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=b0b56b0dd1fc4ee991cbdcd454b07cZe Accessed October 19, 2016.

percentage of DWTM. The optimum moisture content of the blended material was also relatively consistent – the higher the maximum dry density, the lower the optimum moisture content. As previously mentioned, the blends were mixed by volume, not by weight, and thus should be comparable to how the material will be handled and blended by construction equipment on-Site.

The Slope Stability Analysis is included in Appendix F. The Summary of Geotechnical Laboratory Testing Results with more detailed results and discussion is included in Appendix G-1.

2.3.3 Soil/DWTM Blended Fill Characterization

The following three soil/DWTM blends were selected for the preliminary testing program and three replicates of each blend were prepared using the selected DWTM and on-site soil sample:

- 50% Native Soil and 50% DWTM (1:1 soil:DWTM)
- 67% Native Soil and 33% DWTM (2:1 soil:DWTM)
- 33% Native Soil and 67% DWTM (1:2 soil:DWTM)

One blend sample of each mix was analyzed using SPLP. The objective of this analysis is to simulate material sitting in-situ exposed to rainfall (with an assumption that the rainfall is slightly acidic) then evaluate the organic and inorganic analytes present. Generally, the SPLP method simulates environmental precipitation and the leaching potential of a contaminant in soil, and offers a method to assess chemical mobility in the environment. A Sampling and Analysis Plan (SAP) has been developed to characterize the chemical constituents in the blended materials to ensure that blended materials being placed are meeting or exceeding applicable chemical standards. The SAP, provided in Appendix J, discusses sample methodology, laboratory analyses, data quality assurance/data quality control, frequency of sampling, and applicable comparison standards.

2.3.3.1 Soil/DWTM Totals Analysis Results

Table 2 presents the chemical results of the soil/DWTM blend samples. No parameters reported above the method detection limits (MDL) exceeded the Ohio VAP standards. Of the fifteen metals analyzed, only two metals, arsenic and thallium, exceeded one or more of the USEPA Region 9 levels, however thallium results were below back ground for Lucas County and arsenic was generally similar to background, with samples exceeding Lucas County background marginally. Of the 32 Volatile Organic Compounds (VOCs) analyzed, only two were detected above the MDL and one exceeded applicable standards. Of the 53 PAHs analyzed, 15 were detected above the MDL and 7 exceeded one or more standard. No pesticides or PCBs were detected above the MDL.

For the 33/67 soil/DWTM blend parameters detected above the MDL, in addition to arsenic and thallium exceedances, one of the three samples exceeded the RSL for benzo(a)pyrene. Some metals exceeded the Soil to Groundwater SSL MCL levels but no other parameters exceeded the Soil to Groundwater SSL MCL. Cyanide exceeded the Soil to Groundwater RBL in all three samples, and one sample exceeded the RBL for benzo(a)anthracene, benzo(a)pyrene, and benzo(b)fluoranthene.

For the 50/50 soil/DWTM blend parameters detected above the MDL, in addition to arsenic and thallium exceedances, one of the three samples exceeded the RSL for benzo(a)pyrene. Some metals exceeded the Soil to Groundwater SSL MCL levels but no other parameters exceeded the Soil to Groundwater SSL MCL. Cyanide exceeded the Soil to Groundwater RBL in all three samples, and one sample exceeded the RBL for benzo(a)anthracene, benzo(a)pyrene, and benzo(b)fluoranthene.

For the 67/33 soil/DWTM blend parameters detected above the MDL, only arsenic and thallium exceeded the RSL. No other parameters exceeded the RSLs. Some metals exceeded the Soil to Groundwater SSL MCL levels but no other parameters exceeded the Soil to Groundwater SSL MCL. Cyanide exceeded the Soil to Groundwater RBL in all three samples, and one sample exceeded the RBL for 4,6-dinitro-o-cresol.

Overall, metals were generally close to the Lucas County, Ohio background concentrations. It is important to note that many of the soil to groundwater screening levels are several orders of magnitude less than the measured Lucas County, Ohio background concentrations. While the metals in the blends exceeded some screening levels, many were similar to Ohio background concentrations. Metal and mercury concentrations generally did not vary significantly across the three blends. Concentrations of organic carbon, cyanide and PAHs, and pH values, declined with the higher soil ratio blend.

2.3.3.2 Soil/DWTM SPLP Analysis Results

The soil/DWTM blends were then analyzed using SPLP and results compared to various screening standards, including Ohio VAP, Primary and Secondary Drinking Water, USEPA RSLs for residential soil to groundwater, and on-site/local groundwater wells. The objective of the SPLP analysis was to simulate material sitting in-situ exposed to rainfall.

Table 3 presents the SPLP chemical results of the soil/DMTW blends. No chemical constituents were detected in the blends exceeded the Ohio VAP standards. Arsenic concentrations exceeded the USEPA RSL for Soil to Groundwater, but were well below Primary and Secondary Drinking Water Standards.

2.3.4 On-Site Well and Quarry Sampling Results

Groundwater samples were collected from the four observation wells (OW-1 through OW-4) and from the water within the quarry on September 1, 2016. Figure 2 shows the sampling well and ODNR water well locations. Samples were analyzed for metals, chloride, turbidity, sulfate, ammonia, alkalinity, specific conductance, and total dissolved solids per Ohio EPA comments dated October 7, 2016. Boring logs, field notes and laboratory analytical results are provided in Appendix H.

Results from the September 1, 2016 groundwater sampling event in addition to a sample collected from the Site's NPDES outfall on January 27, 2016 are presented in Table 4. Results were compared to US EPA primary and secondary drinking water standards, Ohio VAP Unrestricted Potable Use, and USEPA Region 9 residential tap water screening levels. In addition to the on-site wells, the average concentrations from 1987 to 2015 from the Village of Elmore Public Water Supply Well Ambient Groundwater and the 66/33 soil/DWTM blend SPLP results are included in Table 4 for comparison purposes.

On-site well sampling results and nearby groundwater data indicate that metals appear to be naturally high in the ambient groundwater in the vicinity of the Site. Of the 21 metals analyzed in on-site samples, ten were detected above the MDL. Arsenic, barium, beryllium, iron, lead and manganese exceeded drinking water standards in OW-2. Manganese also exceeded one or more drinking water standards in OW-3. It is important to note that OW-2 had what appeared to be significant iron bacteria present. Iron staining was also observed on the highwall to the quarry located east of OW-2. Only iron exceeded drinking water standards in all of the on-site well samples. However, iron was also elevated in the Elmore ambient groundwater. The quarry water sample only exceeded the sulfate drinking water standard, however the Elmore ambient groundwater sulfate concentration also exceeded the drinking water standard and was higher than most of the on-site well concentrations.

Table 5 shows the water levels in the on-site wells. A steady drop in static water levels was observed throughout the monitoring period. Table 6 summarizes wells within one mile of the Site, as provided by ODNR, and site-specific information for the OWs.

3.0 PROJECT OVERVIEW

3.1 Facility Location

Beneficial use of the DWTM is proposed at the Rocky Ridge Quarry property located at 14591 West Toussaint North, Graytown, Ottawa County, OH 43432. A Site Location Map is provided as Figure 1.

3.2 Proposed Use and Implementation

The proposed beneficial use of the DWTM facilitates reclamation of the Rocky Ridge quarry, while utilizing a material that otherwise requires an off-site disposal facility. The abandoned quarry provides substantial and sustainable air space for long-term placement and permanent storage of the DWTM, provided the blending of the DWTM with soil as discussed herein. Rocky Ridge (the Operator) proposes to blend the DWTM with soil to create a stable, controlled fill material inside the quarry.

Based on the results of the laboratory testing, it appears the Blended Fill is suitable for its intended use as embankment material as a screening berm and to fill the quarry at the Site. Once mixed with the DWTM, the blended material appears to be a compactable material with relatively low permeability. The results demonstrate that a blend of two parts native soil, and one part DWTM (67% On-Site Soil and 33% DWTM) by volume when compacted to at least 85% of the maximum dry density (MDD) and at or above its optimum moisture content (OMC), as determined by the moisture-density relationships per the Standard Proctor testing results, can achieve a permeability of 10^{-6} cm/sec or less, which is two orders of magnitude less that the regional bedrock permeability (See Appendix G). Therefore, the two parts soil to one part DWTM blended material can be considered suitable for use in the beneficial use application at the Site as the SPLP and other laboratory testing and Site information demonstrates that the Blended Fill will not likely create a nuisance or pose an unacceptable risk to human health or the environment, and is capable of complying with other applicable laws.

3.2.1 Description of Excavation Approach and Subgrade Preparation Protocol

Minimal excavation is anticipated as part of the IAWMP, other than excavation of the native on-site soils as borrow for blending and embankment. However, existing loose material on the quarry bench will be cleared prior to placement of Blended Fill. Existing rock and stone piles will be removed and used on-site for road base or taken off-site. Existing quarry lime fines (i.e., lime generated from quarry operations and not DWTM lime) stockpiles that are currently located within the quarry footprint (and were underwater prior to pumping of the quarry) may either be removed, utilized during blending activities, or left in place. Existing quarry lime fines stockpiles may only be left in place as long as they can be proven to provide a stable, suitable subgrade for Blended Fill. Ultimately, a subgrade surface will be cleared down to competent rock or to a stable, suitable subgrade to facilitate placement of the leveling layer. A stable, suitable subgrade

is achieved if the subgrade passes a proof roll with a fully-loaded tandem axle dump truck (or equivalent). Additionally, any debris or equipment previously submerged prior to dewatering shall be removed from the quarry and properly disposed/stored prior to placing Blended Fill (DWTM/soil).

3.2.2 Description of Process/Blending

The Operator plans to utilize construction equipment to blend DWTM with soil. The soil source used to blend with the DWTM will be native soil generated from borrow areas in the adjacent farm fields owned by Rocky Ridge. Based on the depth to bedrock as reported by local bedrock maps, exploratory test pits excavated by Rocky Ridge, and the thickness of overburden encountered during well installation, it is anticipated there is an adequate volume of overburden soil available on-site for the proposed operations.

The Operator plans to perform blending activities within the quarry, in small (approximate 2 to 3-acre), efficient work areas. These blending cells will be prepared on a competent, stable, suitable subgrade and constructed with a maximum 6-foot tall soil berm around the perimeter of the individual blending cells. In order to import and dry the DWTM, blend with soil, and place/compact the Blended Fill in an efficient manner, it is anticipated that the Operator will utilize multiple cells at the same time. To facilitate an iterative and systematic process, the Operator will generally follow these procedures when utilizing the cells:

1. Install leveling layer (for first blending cell directly on bedrock surface) and construct maximum 6-foot tall soil berms to create approximate 2 to 3-acre blending cells.

2. Construct haul roads to allow dump trucks to offload DWTM directly into the various blending cells.

3. An initial cell will be used to dry the DWTM to a workable moisture content. The DWTM will be placed in minimum 6-inch lifts up to maximum 18-inch lifts and allowed to dry. The DWTM will remain in the blending cell approximately 3 to 5 days (i.e., duration dependent upon weather, DWTM lift thickness placed, wind, etc.) and exposed to the sun and wind until a suitable and workable moisture condition is achieved. If Rocky Ridge desires to expedite the drying process, the DWTM may be "turned over" with excavators, dozers, or with pull-behind discs.

   Due to the DWTM's high affinity for water, a paint filter test will be used for the verification that DWTM is at a moisture condition suitable for blending with soil. This is a practical and efficient approach in quickly determining if the DWTM moisture is too high as the soil/DWTM blend will not be able to achieve compaction if free liquids are present. A paint filter test will be performed daily when soil and DWTM is being blended in general accordance with U.S. EPA Paint Filter Liquids Test Method (EPA 9095B) using a standard conical paint filter [60 +/- 5% (fine meshed size)] available at most local paint stores. A passing test is defined as a sample that does not pass through the filter during the five (5) minute period and the material would be considered to be at a suitable moisture condition for blending. If any portion of the sample passes through and drops from the filter in the 5-minute period, then the material is deemed to "fail" the test as it contains free liquids and would be considered unsuitable for blending with soil. The daily moisture checks will be documented on the form provided in Appendix K.

4a. If the DWTM is placed in a 6-inch lift and the material is at an acceptable moisture content as verified through the paint filter test, a 12-inch thick soil lift may then be placed over the DWTM to facilitate the 2:1 ratio for blending. The DWTM and soil will then be mixed in-place within the cell with a dozer with ripper and/or a pull-behind disc to create a relative homogenous blend and to minimize "patching". The 18-inch thick layer of blended material will then be compacted in place and the process repeated until the blending cell is at capacity. (As an alternative, the soil may be placed first within the blending cells prior to the proper thickness of DWTM is placed over the soil layer to achieve the 2:1 blending ratio.)

4b. If the DWTM is placed in a 6 to 24-inch thick lift, the material will remain in the cell until it is at an acceptable moisture condition. Once the material has dried out, the DWTM may be relocated to an adjacent cell and placed in a 6-inch lift and blended/compacted in a similar manner as discussed in Step 4a. Alternatively, as the DWTM material is relocated to an adjacent cell, the soil may be incorporated simultaneously to create the proper 2:1 blending ratio as the material is being placed and then compacted.

5. Upon achieving a satisfactory blend in Step 4a or 4b, the Blended Fill will be compacted in eighteen-inch (18") maximum loose lift thicknesses. Each lift will be compacted with a sheepsfoot compactor in order to meet the eighty-five percent (85%) compaction specification at or above its optimum moisture content, as determined by Standard Proctor (ASTM D698). The Operator is proposing to use a Holmes 60x60 sheepsfoot, pull-behind roller to compact the Blended Fill. Manufacturer's information on the compactor is provided in Appendix I. (An equivalent sheepsfoot compactor of similar weight may be used, if approved by the Engineer.)

6. One or several cells may be used concurrently to dry out the DWTM. Similarly, one or several cells may be used to blend, place, and compact the Blended Fill. As the blending cells near capacity, new blending cells will be constructed adjacent to or over previously completed blending cells. The construction and filling of the blending cells will continue as additional fill is placed within the quarry.

The Operator may adjust the procedures as outlined above provided that the blending process creates a DWTM final Blended Fill that has a ratio of one (1) part DWTM to two (2) parts soil (by volume). If these procedures are significantly changed, Rocky Ridge will submit a modification to this IAWMP for approval by Ohio EPA prior to making the change. Note that the Blended Fill will be mixed in bulk, and that the 2:1 blend ratio may vary slightly from one area to another due to differences in moisture content, blend process, soil variances, or other factors.

As previously discussed, in order to import DWTM, blend material, and place/compact material in an efficient manner, it is anticipated that the Operator will utilize multiple cells at a time. Additionally, the Operator may elect to berm a portion of the property to the north and to the west of the quarry to create additional blending areas. If utilized, the Blended Fill would be mixed in those cells, and transported, placed, and compacted within the quarry at a later time.

Interim berms within the quarry are anticipated to be constructed between cells utilizing either Blended Fill or soil. The maximum slopes are provided on the Site Plan drawings in Appendix D. If Blended Fill is utilized for interim berms, they shall be constructed in lifts and compacted as previously specified if they are intended to remain in-place.

3.2.3 Storm Water Management Strategy

Perimeter screening berms are currently under construction around the perimeter of the quarry pursuant to the approved LAMP and ODNR's reclamation plan, which not only screens the work area from surrounding properties, but minimizes additional stormwater from entering the quarry. The overall stormwater management strategy of the IAWMP is to manage the DWTM contact water (i.e., liquids that come into direct contact with DWTM) within the ponds located in the quarry until it can be discharged to a permitted NPDES outfall. The blending cells will be prepared in a manner to promote positive drainage to the pond (e.g., slightly graded toward the pond, utilizing temporary construction drainage ditches, culverts through the berms, temporary pumps, etc.). The drying and blending cells will be bermed to prevent DWTM contact water from entering the deep (southern) end of the quarry.

The current location of the dewatering pump is in the northwestern corner of the quarry, within an existing pit or pond. The dewatering pump discharges to a drainage ditch, which is currently a permitted NPDES outfall. The IAWMP strategy is to utilize this pond as a location to collect stormwater runoff and contact water, where it will be contained within this pond, and promptly discharged to the permitted outfall. As previously discussed, this will require a permit modification to the existing NPDES permit. The Stormwater Management Plan is included in Appendix C.

3.2.4 Description of Placement of Blended Fill

Upon preparation and survey of the quarry bottom, the Blended Fill will be placed and compacted in lifts within blending cells in the quarry as described in the sections above. The placement of Blended Fill is scheduled to be performed in three general (3) Phases:

Phase 1: This phase will include placement of Blended Fill in the northern portion of the quarry on the mid-level bench at an approximate elevation 552 feet (NAVD88). The proposed design grades for Phase 1 are included in the Plans found in this IAWMP in Appendix D. This will require maintaining the water elevation of the quarry below the quarry bench and all subsequent Fill Areas of the Phase. Noteworthy items of Phase 1:

- A soil Diversion Berm will be constructed at the edge of the El. 552 feet bench for both safety and stormwater management purposes. A drainage ditch may need to be installed between the haul road and Diversion Berm and sloped towards the pond – if the pond is

higher in elevation than the ditch, then a pump will need to be used to convey water to the pond.

- A minimum forty-foot (40') buffer will remain between the toe of Blended Fill and the edge of the El. 552 feet bench to provide ample work room for maintenance, equipment access, stormwater management, and to facilitate Phase 2 work activities.
- Maximum Phase 1 final slopes are 4H:1V. Interim slopes are also at a maximum of 4H:1V.
- Minimum final Phase 1 slopes are at 2% to promote positive drainage, and erosion control features (i.e., check dams, rock letdowns, etc.) shall be installed upon completion of final grades.

Phase 2: This phase will consist of placement of Blended Fill within the deeper southern portion of the quarry, at approximate elevation 496 feet. This will require dewatering the entire quarry to allow for placement of Blended Fill on a dry, competent subgrade surface. The proposed design grades for Phase 2 are included in the Plans found in this IAWMP in Appendix D.

Phase 3: This phase will consist of placing Blended Fill within the limits of the quarry (i.e., within the screening berm), and on top of previous placed Blended Fill. The design grades (maximum elevation of ~617.5 feet) will exceed surrounding farm field elevations to allow positive drainage away from the reclaimed quarry. The proposed design grades for Phase 3 are included in the Plans found in this IAWMP in Appendix D.

3.2.5 Groundwater Monitoring and Groundwater Contingency Plan

The Groundwater Monitoring is included in Appendix E-1. The plan was developed to monitor both flow (level) and chemical characteristics of the groundwater at the Site during and after DWTM filling operations at the Site. The Contingency Plan is included in Appendix E-2.

As discussed in Section 2.2, additional hydrogeological testing will be conducted at the Site. Information obtained from the additional testing will be used to determine the placement of additional monitoring wells in the Groundwater Monitoring Plan. The additional monitoring wells will include development and sampling of eight additional monitoring wells at the property. It is assumed that the eight wells will be installed in clusters of two wells at a minimum of four separate locations across the property. A minimum of two of the well clusters will be placed as close as possible to the southern border of the quarry, as the majority of residential areas in closer proximity to the property are located to the south of the quarry. It is assumed that a third cluster will be located to the west of the quarry. The fourth and final cluster may be located to the north or northeast of the quarry, in the presumed downgradient flow direction of the regional carbonate aquifer. Additional hydrogeologic testing and amendments to the Groundwater Monitoring Plan are include in Appendix L.

A Contingency Plan has been prepared as part of the IAWMP application to present a plan for providing the surrounding properties with potable water (e.g., installation of a waterline, hauling of water, etc.) in the event the activities at the Site negatively impact groundwater quality. This contingency plan is similar to the plan required by the Ohio Department of Natural Resources. Note that documentation of financial assurance is also provided in an appendix of the groundwater monitoring plan. Refer to Appendix E-2 for the Contingency Plan.

3.2.6 Engineering Controls

Engineering controls are necessary for this project to be protective of human health and the environment during the course of the project. Most notably, the main purpose of these engineering controls is to minimize or prevent an impact to surrounding groundwater via quarry water. Additionally, it is known that the Site is located on well fractured limestone, which provides additional avenues to the surrounding groundwater aquifer. To mitigate potential problems, the following engineering controls are proposed to be implemented:

- Maintain Quarry Dewatering: To ensure the work area remains dry and uncompromised, the water elevation inside the quarry will be maintained below the work areas. The quarry water will be dewatered and discharged through the existing, permitted dewatering system. The existing NPDES permit will need to be modified prior to discharging DWTM contact water through the existing outfall. The current location of the dewatering pump in an existing pond will require relocation as the IAWMP Phases move forward.

- Leveling Layer: For blending activity efficiency, it is necessary for the blending to occur within the quarry in approximately 2 to 3-acre cells. To minimize entering of the high-moisture DWTM into the limestone fractures that may be present of the quarry bench and in the south end of the quarry, a three-foot (3) thick soil or Blended Fill leveling layer will be installed as the first lift in the first cell on suitable subgrade prior to receiving DWTM within the quarry. A leveling layer is required in each first cell located directly on the bottom of the existing quarry. Maximum six-foot (6') tall berms consisting of either soil or Blended Fill will also be constructed on the outside edges of each cell to contain the contact water. The Leveling Layer will be placed in maximum 8-inch loose lifts (i.e., ~6-inches compacted) and compacted to a minimum of 90% of the maximum dry density and at or above its optimum moisture content as determined by Standard Proctor testing. Prior to placing each subsequent lift of the leveling layer, the surface of the previous layer will be scarified (e.g., sheepsfoot indentations if ¾-inch or greater in depth, disced, tracked with a dozer, etc.) in between lifts to ensure an adequate bonding between lifts. A smooth drum roller will not be used for compaction of the Blended fill. If a smooth drum roller is used to seal the work area as a result of forecasted rain, the smooth-drummed surface will be scarified prior to placing the next lift. Compaction testing of the leveling layer will be tested at a frequency of 2 tests per acre per lift.

- Diversion Berms: A Diversion Berm will be constructed with soil near the edge of the existing quarry bench at an approximate elevation of 552. These berms have a dual purpose in providing safety to trucks and construction equipment, as well as to preventing unwanted stormwater from entering the quarry water.

3.3 Anticipated Dates of Start and Completion

The Operator anticipates commencing IAWMP activities immediately pending Ohio EPA approval and completion of the perimeter screening berm currently in process and being completed as part of the approved LAMP and ODNR mining reclamation plan. The Operator anticipates the project will be completed in approximately 10 years from project start.

3.4 Other IAWMP Projects

All DWTM imported to the Site under the IAWMP is anticipated to be beneficially used on-Site. No use of DWTM is proposed for other IAWMP projects at this time.

At this time, this is the first known IAWMP project utilizing DWTM for beneficial use. Historical uses of lime products, rather than lime sludge or lime wastes, have been and continue to be used in lesser blended amounts in the construction industry to modify soil moisture. Consequently, it should be noted that Rocky Ridge plans to continue to temporarily stockpile Agricultural Lime (Aglime), which is not considered part of the IAWMP process, over portions of the Site until the material can be taken off-site for use in construction applications; the Aglime may also be used during the soil-DWTM blending process under the IAWMP if the moisture condition of the blended material needs to be modified/reduced to facilitate compaction.

3.5 Estimated Volume and Rate of Disposal

Based on the estimated airspace volume within the quarry using bench elevations of 552 and 496 feet, respectively, from the Site's mining permit IM-320, and utilizing a general top elevation of 617.5 feet, there is roughly 3.8 million cubic yards (CYs) available within the quarry for beneficial use of blended material. This volume will be further refined as the internal quarry bench grades are prepared and surveyed for accuracy, as well as a final design for Phases 2 and 3 is completed. This volume does not include screening berms outside of the quarry.

Approximately 1,000 to 1,500 CY, at an average of 1,200 CY, of DWTM is expected to arrive from the City of Toledo Collins Drinking Water Treatment Plant (DWTP) per day. Trucks are anticipated to operate for nine (9) months per year, Monday through Friday (may work Saturdays, if needed), with some anticipated weather days. As the DWTM will be blended with on-Site soil or other borrow sources, the blended material will consist of an approximate 2:1 soil:DWTM, by volume. It is anticipated that the DWTM roughly consists of approximately thirty-five (35) percent solids and sixty-five (65) percent water by volume. DWTM has a high affinity for water and will need to be nominally dried out so there are no free liquids present, as verified with a paint filter test, and the material can be properly blended and compacted with on-site soil. Based on Rocky Ridge's experience with working with the material at the Site as part of the LAMP, the DWTM will experience some reduction in volume when drying out, however, an accurate quantitative value

cannot be determined as the magnitude will vary based on the area (spatially and vertically) the DWTM material is being excavated from within the City lagoons and ambient weather conditions (e.g., temperature, wind speed, sun exposure, etc.). Based on a rough estimation, an average volume reduction of 10 to 25%, with sometimes no reduction, can be realized when the DWTM dries out in the blending cells for the 3 to 5-day timeframe. The Operator anticipates placement of approximately 2,250 to 4,500 CY of blended material per workday. As previously discussed, based on the depth to bedrock as reported by local bedrock maps, it is anticipated there is an adequate volume of overburden soil available on-site for the proposed operations.

3.6 Documentation of Work Activities

3.6.1 Material Documentation

As previously stated, the Operator has procured a contract with the Toledo Collins DWTP to receive the DWTM. As part of the contract, the Toledo Collins DWTP tracks the number of truckloads of DWTM removed from their lagoons. The trucks directly travel to the Site to deliver the DWTM. Therefore, in order to document the beneficial use activities, the Operator plans to obtain truck count information on a monthly basis, which can be correlated to a beneficial use placement volume based on estimated truck volume.

Additionally, aerial surveys (via drone, field survey, or aerials) may be performed on an annual basis within the quarry to track placement volume. An initial survey of the prepared subgrade within the mid-bench (i.e., El. 552 feet) and the bottom bench (i.e., El. 496 feet) of the quarry will be performed prior to placement of Blended Fill. Therefore, annual surveys can be compared to calculate an annual in-place volume of Blended Fill placement.

3.6.2 In-Place Density Testing

To ensure Blended Fill is placed in a manner that achieves a well compacted and stable fill material, In-Place Density testing will be performed on a regular basis during Blended Fill placement activities. The geotechnical laboratory test results provided in Appendix G-1 demonstrates that the Blended Fill can achieve a relative low permeability of 10^{-6} cm/sec or less, which is significantly lower than the calculated permeability of the local bedrock by the MODFLOW modeling. Therefore, a key objective of the compaction testing is to demonstrate the Blended Fill is being placed in a stable condition to facilitate the construction and filling activities.

Density testing is anticipated to be performed using a nuclear densitometer to verify that the placed Blended Fill is being placed at a minimum of eighty-five (85) percent compaction specification at or above its optimum moisture content to ensure that the material meets the stability and compaction requirements of the Blended Fill, and to ensure that the desired permeability rate lower than the local bedrock is achieved. In-place

density and moisture content will be compared to Standard Proctor laboratory test results (ASTM D698) of the Blended Fill (blended based on volume). Based on the results of the previously completed Standard Proctor testing performed on specimens considered to be representative of the Blended Fill that consists of 67% on-site soil and 33% DWTM (Hull Lab Sample # B16-1161) as provided in Appendix G-1, the maximum dry density to be used as the compaction control criteria will be 108.5 pcf and an optimum moisture content of 17.2%. As additional moisture-density relationships are developed through Standard Proctor tests, as a conservative approach, the highest maximum dry density and highest optimum moisture content from the group of the Standard Proctor tests will be used during compaction control to ensure the density and moisture contents are being achieved.

If in-place density or moisture does not meet required specifications, the Fill area shall be re-worked in between passing tests to achieve passing compaction results (e.g., drying/wetting of Blended Material, additional compactive effort, etc.). Also, additional moisture-density (Proctor) curves may be necessary if the compaction control criteria being used (i.e., Hull Lab Sample # B16-1161) does not appear to be representative of the DWTM and/or soil material being placed. At a minimum, up to 3 additional Standard Proctor tests will be performed prior to commencing blending operations at various locations across the proposed borrow area that is mixed with the appropriate DWTM ratio to confirm the appropriate moisture-density control criteria are being used. Additionally, if Blended Fill continually does not meet required compaction specifications, alternative blending techniques should be considered, and additional geotechnical testing may be performed.

At a minimum, one passing in-place density test should be performed for every 10,000 CY of Blended Fill placement, with a minimum of 3 passing tests per week when fill placement is ongoing. Based on the anticipated Blended Fill placement rate of approximately 3,000 to 4,500 CY per work day, this will result in a site visit by a soils technician approximately once to twice per week. At the onset of the project, a higher frequency of compaction testing and site visits by the soils technician will be performed until the operator is comfortable that the drying, blending, and placement techniques result in routinely passing compaction tests. It is the Operator's expectation that the soils technician will perform several tests that are spatially distributed across the work area, at the time of the site visit, which will essentially result in a higher frequency of tests compared to the minimum required of one test per 10,000 CY, with a minimum of 3 passing tests per week. This testing frequency seems appropriate for a fill material that is not anticipated to support structures. The results of the in-place density testing shall be documented in Annual Reports.

3.6.3 Annual Reports

During the course of permitted construction activities per the IAWMP, the Operator will submit an Annual Report documentation general work activities. The Annual Report will contain geotechnical information (i.e.,

nuclear density testing results, additional geotechnical laboratory testing results, etc.), placement volumes, truck count information for DWTM, and an updated survey of the previous year's work area at after the end of the year. Reports will be submitted by the Operator in a timely manner to the Ohio EPA, but no later than March 31st.

3.6.4 Construction Completion Report

Upon completion of beneficially using DWTM material within the quarry, a Construction Completion Report will be prepared to document the work activities. The Construction Completion Report will be submitted by the Operator and will include aspects of the Annual Report, including a final survey of the reclaimed quarry.

4.0 LITERATURE CITED

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EXHIBIT K

BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION
STATE OF OHIO

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NOTICE OF APPEAL

v.

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Notice is hereby given that the above captioned appellants hereby appeals to the Environmental Review Appeals Commission, from the final action of Director, Ohio EPA taken on February 14, 2017. A true and accurate copy of the final action is attached.

PROCEDURAL AND FACTUAL BACKGROUND

Background: The Toledo Collins water treatment plant is in need of upgrades and the clay lined lime residual (DWTM) lagoons that have not been maintained since the 1950's need to be removed to make room for the upgrades. These lagoons are lined with clay to prevent leaching even though no one in the area of the lagoons has a private drinking well. The historic lab analysis of this material has shown it to contain Arsenic, Lead, Cadmium, Copper, Mercury, Nickel, Selenium and Zinc among other substances. The Ohio EPA has stated that time is of the essence in the excavation and removal of this material for the upgrades to occur. Previously when the lime residuals were removed they were either surface applied at a typical rate of one to two tons per acre for agriculture or hauled to a lined landfill.

On 11.13.14 the director of the Ohio EPA approved a beneficial reuse short term permit (BENU020621) for Stansley Industries for the "beneficial reuse of lime residuals (DWTM) in a soil blend as general fill". This issuance came on the heels of Stansley having been found

disposing of the same material at a hard fill site on Glenwood Rd in Rossford without necessary permitting. Stansley was ordered to stop working at the site, grade, cover with 12" of soil and seed to guard against erosion. None of which to date appears to have occurred at this site.

After the disposal of the DWTM was halted at the Rossford site the Stansley's purchased an abandoned limestone quarry on SR 590 in Benton Township, Ohio and soon after began hauling the lime residuals to the quarry grounds. The Ohio EPA has confirmed knowledge that this quarry was designated by an ODNR water division study as a high potential for pollution, second only to the shores of lake Erie. This porous limestone quarry has a known, verifiable connection to the aquifer that supplies the local private wells in the township. This is pertinent as residents of Benton Township all have private wells, there is no regional water in the township.

We, Benton Township residents, began monitoring the activity at the quarry, now doing business as Rocky Ridge Development (RRD) in August of 2016 when we were made aware of the situation. We have been in constant communication with the Columbus office, Ohio EPA, regarding RRD seemingly working outside the scope of the LAMP permitting. We have sent documentation of what we believe are violations by means of aerial (drone) photography and video showing the semi-liquid DWTM being dumped directly into the excavated limestone pits without the benefit of any method of isolation or blending with soil.

We have been informed that the Ohio EPA responded with numerous site visits, which would indicate they are fully aware of the totality of the situation. Although RRD was found to be digging pits to bedrock and dumping the semi-liquid DWTM directly into these porous limestone pits the Ohio EPA has chosen not to require them to remedy the situation.

In addition RRD would appear not to be drying and then blending the lime residuals with soil in the 1 part DWTM to 2 parts native soil the LAMP permit requires. RRD is also creating low lying areas at the quarry site and adjacent agricultural property with the express intention of disposing of the DWTM which was never intended by the original lamp.

The residents of Benton Township believe that RRD is creating a landfill situation at the former quarry grounds and there appears to be no regulatory oversight at the quarry. This is evidenced by the fact that the Ohio EPA has chosen to only modify the LAMP instead of taking corrective action and more closely defining the scope of the LAMP permit. Additionally, the Ohio EPA is still reviewing an unprecedented IAWMP permit that would allow RRD to dispose of the DWTM directly into the quarry pit itself.

ASSIGNMENTS OF ERROR

DWTM is being placed on bedrock without the benefit of isolation jeopardizing the local water supply. On November 8, 2016 the Ohio EPA notes ***New section 3.2.5 "Please revise this section to specify that the material currently on-site placed into pits excavated through the existing overburden will be used for construction of the 6-foot dike walls within the cell. Ohio EPA would like for the material that has been dumped into these pits south of the quarry to be removed as the pits are in contact with the rock and are unlined. Since a significant quantity of material will be needed to construct the numerous 6' dikes that will frame the 1 acre cells, this material should be used.***" Again November 14, 2016 Phil Cherosky Ohio EPA writes to

RRD "***During the meeting and site inspection the Facility owner indicated the pits located on the south end of the Facility were dug to bedrock. Ohio EPA then observed this practice in the pit being excavated at the southwest corner of the Facility. The LAMP application states in part, "The submitted LAMP permit application proposes to beneficially use lime residuals as a material to blend with soil for the purpose of increasing elevation and improving drainage. The practice of excavating pits to bedrock and filling them with water treatment sludge and soil does not appear to comply with at a minimum the intent of the 2014 LAMP. As indicated to the Facility owner and the Applicant at various times Ohio EPA does have concern with placement of the lime residual on bedrock without a minimum soil buffer separating. Please respond by indicating how this practice of excavating to bedrock and filling pits with lime residuals and soil complies with the existing authorization, and does not threaten to impact groundwater.***" There is no remedy for what has already occurred in the modifications. Are we to assume that these modifications are from this point forward with no regard to the huge quantity of DWTM that has been placed on bedrock? A test well is mandated in the modifications to be drilled near the quarry pit. What happens if/when that well tests positive for contaminants? There is no going back once the aquifer is contaminated.

The concerns of the Benton Township residents with the modified LAMP are:

- (#8) Blending of DWTM at a ratio of 35% DWTM to 65% soil. This condition was a requirement of the original LAMP permit. From the evidence we have gathered through drone photos and video it would appear that drying and blending is not occurring. Are we to believe that RRD will now comply to this requirement?
- (#10) It appears that 35,000 cubic yards of DWTM is allowed to be dumped without the benefit of drying and prior blending in an low lying area created for the express purpose of disposal which is also contrary to the terms of the permit. It would seem that because RRD has begun working on this "cell" outside the scope of the LAMP that the Ohio EPA is essentially giving them a pass to violate (2 provisions) at least temporarily.
- (#14b) DWTM shall be at least 100 feet from other surface waters of the state as defined in ORC 6111.01 ***"Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and other bodies or accumulations of water, surface and underground, natural or artificial, regardless of the depth of the strata in which underground water is located, that are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters that do not combine or effect a junction with natural surface or underground waters".*** Because of the nearby quarry waters and its known verifiable connection to underground water that supplies our area private wells, we believe this to be in direct conflict with the current practices allowed to continue at RRD. In addition if this is to be also interpreted vertically many of the wells draw from a distance far less than 100 feet, meaning the water table is quite shallow in this area.
- (#15) In the modified LAMP there are also no parameters to define the terms "nuisance" or "fugitive dust" allowing for individual interpretation. Dust concerns near the quarry have been a problem for months. It is not only a nuisance as the dust is compromised of both soil dust and dried lime and can therefore be corrosive to metals. This DWTM can be seen more often than not all along the roadway for miles near the quarry and has become an issue with motorists and municipalities along the route taken for transportation of the material. Many times when the DWTM is transported the material drips or falls off the tailgates of the trucks and lie in the roadway. The city of Oregon

has recorded several occasions, at least one where the road was closed due to a tailgate spill and another where the hood of a car was damaged. People living near the quarry are reporting their yards, cars and houses covered in the dust from the DWTM transport and as passing vehicles stir up the residual dust on the roadway. This provision was included in the original LAMP permit and has not been followed. Are we to assume reiterating this stipulation will lead to RRD amending their current practices that are in conflict with this narrative?

- (#16) A 1994 ODNR division of water report #20 shows the RRD quarry property as a high potential for pollution. The permitted area is a limestone quarry and its surrounding bedrock outcroppings. This would seem to be in direct contrast with the limitations of the LAMP cited in condition 16 of the modifications.
- (#19) Isolation requirements should also stipulate what isolation material should be utilized for the 5 feet between bedrock and the DWTM. There is a huge difference between isolation with clay or some other porous soil/material. The idea should be to protect the bedrock and therefore the drinking water supply.
- (#21) New test well installation should be required in conjunction with core testing of areas where DWTM has been placed on bedrock without the benefit of isolation and blending as required by the permitting. Where core testing reveals there is a violation of the original LAMP, the removal of all material placed on bedrock should be required.
- (#24) RRD is being allowed to store a full year of the DWTM or blend at the facility. Our estimates of this amount calculated from figures RRD has provided the OEPA are approximately 300,000 cubic yards per year. Shouldn't there be some written clarification of how that material will be addressed should RRD cease operation? Is there a bond being held somewhere that would pay for the removal of this material? Or is the cash strapped township going to have to assume that responsibility?
- The original LAMP permit included a condition (#3) which has been removed from the modification which states "issuance of this permit does not relieve Stansley of the duty to comply with all applicable federal, state and local laws, ordinances and regulations except as specifically exempted herein." RRD is presently working without regard for the current zoning of the property. Benton Township zoning states: "***103.7 The dumping and/or burying and/or spreading, in any manner, of sewage and/or sewage sludge and/or industrial waste is fully prohibited in all thirteen (13) zoning classifications listed herein. 103.8 Landfills for solid waste disposal or for any other waste material shall be fully prohibited in all thirteen (13) zoning classifications listed herein."*** The modification should include this same language. If the original LAMP would have been site specific for the quarry property and care would have been taken to research the proposed site, it would have been realized that the township zoning precluded such activity; and the township would not be in litigation with RRD over this zoning issue today. Since this LAMP modification has statewide implications that could potentially affect other communities we believe this language should remain.

RELIEF REQUESTED

We, as the residents of Benton Township listed below, are respectfully requesting that the modified LAMP permit be revoked. RRD has clearly been in violation of multiple stipulations of the original LAMP and, even after multiple site visits by the OEPA representatives has been allowed to continue operations while knowingly violating the LAMP specifications.

Additionally, we would request core samples be taken of the areas around the quarry grounds where the DWTM has been placed on bedrock and covered over with soil. We would ask that where they are found in violation of the LAMP permit the material be removed and the area restored to the same condition as prior to RRD operations. This request is in addition to at least one new test well to monitor the ground water for contamination as specified in the modified LAMP permit.

Further we request that RRD is required to restore the ground where they have created low lying areas that were excavated with the express purpose of disposing the DWTM, as this was never the intention of the LAMP permit. This would include those areas within 300feet of an occupied structure or potable water supply or 100feet from the quarry pit itself.

We would also ask that a performance bond or other funding source be set aside for remedial action in the event that RRD continue to violate the permitting and then cease operation or if the aquifer becomes contaminated. If this were to occur it would leave the township with only the option of costly litigation. This fund should include both monies to restore the quarry property and to also provide for infrastructure to pipe drinking water from neighboring Carroll Township.

Appellants signatures:

Brenda Weidner

Terry Weidner

Richard Loth

Josh Noble

Judy Roberts

Joshua Dusseau

Pam Lenning

David Millinger

Angel Wadsworth

Rich Herrig

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Notice of Appeal was served via regular U.S. Mail on this 28th day of February 2017 upon the following:

Craig Butler, Director, Ohio EPA

Stansley Industries

Rocky Ridge Development LLC

Appellant signature

Appellant signature

Appellant signature

Appellant signature

Appellant signature

Appellant signature

Appellant signature

Appellant signature

Appellant signature

ENTERED DIRECTOR'S JOURNAL

Ohio Environmental Protection Agency

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

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February 14, 2017

Mr. Scott Stansley
Mr. Charles Stansley
Stansley Industries, Inc.
3793 Silica Rd.
Sylvania, OH 43560

Mr. John Taddonio
Rocky Ridge Development LLC
3793 Silica Rd.
Sylvania, Ohio 43560

Re: Stansley Industries, Inc.
Permit - Short Term Approval
Beneficial Use
Lucas County
BENU020621

Subject: Stansley Industries, Inc. and Rocky Ridge Development LLC Modified LAMP Permit Approval for Beneficial Use of DWTM Blend as General Fill

Effective Date: FEBRUARY 14, 2017

Expiration Date: November 12, 2019

Dear Mr. Stansley and Mr. Taddonio:

The Director of the Ohio Environmental Protection Agency issues this Land Application Management Plan ("LAMP") permit to modify the LAMP permit issued to Stansley Industries Inc. on November 13, 2014 ("2014 LAMP Permit"), to amend conditions and to include Rocky Ridge Development LLC as a permittee, to protect human health or the environment.

Terms

1. The Director of the Ohio Environmental Protection Agency (Ohio EPA) has determined that it is necessary to add, delete and change conditions to the 2014 LAMP permit in accordance with condition no. 13 of the 2014 LAMP permit for the proposed beneficial use of drinking water treatment material (DWTM) in a soil blend as general fill, to protect human health or the environment.

2. Drinking water treatment material (DWTM) is defined for purposes of this LAMP permit as follows: "DWTM generated from the City of Toledo, Collins Water Treatment Facility".

3. Drinking water treatment material blend (DWTM blend) is defined as a homogeneous mixture of a ratio of not more than 35% DWTM with not less than 65% soil. A homogeneous mixture is defined as a mixture which has the same uniform appearance and composition throughout.

4. Pursuant to the authority of the Director under ORC Chapter 6111, the modified LAMP permit for beneficial use of DWTM as general fill is approved subject to compliance with all conditions below.

Conditions

1. This LAMP permit is issued to modify and supersede the November 13, 2014 LAMP permit, pursuant to condition no. 13 of the 2014 LAMP permit, to clarify and amend conditions to include Stansley Industries Inc. or Rocky Ridge Development LLC as a LAMP permittee, and protect human health or the environment. This LAMP permit and the conditions specified herein shall be binding upon Stansley Industries, Inc. [hereinafter "Stansley"] and Rocky Ridge Development, LLC [hereinafter "Rocky Ridge"], and their respective agents and successors in interest.

2. This LAMP permit authorizes Stansley or Rocky Ridge to beneficially use DWTM in a soil blend for general fill to increase elevation and improve drainage in existing low lying areas, in accordance with the LAMP permit application submitted on August 15, 2014, and with the conditions contained herein on the Rocky Ridge Property (the "Property") located at 14591 W Toussaint North and 3017 North S.R. 590, Benton Township, Ohio, Ottawa County.

3. Prior to relying upon this LAMP permit for the beneficial use of DWTM blend on any other property than the Property described in condition no. 2 above, Stansley or Rocky Ridge shall notify Ohio EPA in writing, and shall demonstrate to Ohio EPA's satisfaction that the beneficial use of DWTM blend on such other property is capable of satisfying the conditions, siting criteria and isolation distances in this LAMP permit, and obtain written concurrence from Ohio EPA for the storage of DWTM, and for mixing and beneficial use of DWTM blend to increase elevation and improve drainage in existing low lying areas on such Property. Ohio EPA may require the installation of wells in specific locations on such property and ground water monitoring to determine impacts to ground water as a condition to Ohio EPA's written concurrence with any demonstration made pursuant to this condition in lieu of condition no. 21. Upon Ohio EPA's written concurrence with such demonstration required by this LAMP permit, the conditions within this LAMP permit shall apply to such property, and Ohio EPA's concurrence shall be deemed to be incorporated in and made an enforceable part of this LAMP permit.

4. Prior to storing or mixing DWTM, or beneficially using DWTM blend at a location other than the Rocky Ridge property, in addition to obtaining concurrence under condition no. 3, Stansley or Rocky Ridge shall provide a copy of this LAMP permit to the owner of the property where the DWTM will be stored or mixed or where the DWTM blend will be beneficially used; and, Stansley or Rocky Ridge shall obtain written consent from the owner of the property to store, mix or beneficially use DWTM blend on such property, to install wells on such property, and to take any actions necessary to comply with this LAMP permit.

5. Stansley and Rocky Ridge shall not perform excavation and filling in areas excavated for the purpose of creating low lying areas to fill with DWTM or DWTM blend pursuant to this LAMP permit, including areas where soils are excavated for purposes of blending in accordance with this LAMP permit. Only DWTM generated from the City of Toledo, Collins Water Treatment Facility is eligible for beneficial use under this Permit. All DWTM generated from other sources and all other beneficial uses must be separately approved by Ohio EPA.

6. The Director, or his authorized representative(s), may enter upon the premises of any Stansley or Rocky Ridge properties, the Property described in condition no. 2, or any property receiving DWTM for soil blending in accordance with this LAMP permit, at any reasonable time, for the purpose of conducting inspections, collecting samples of DWTM to analyze the material under the paint filter test, Method 9095B, collecting samples of DWTM blends, including from the area where the DWTM blend has been placed for beneficial use to analyze whether the material meets the homogeneous mixture of a ratio of not more than 35% DWTM with not less than 65% soil, for conducting tests, or examining records or reports pertaining to the soil blending process.

7. Prior to mixing with soil, Stansley or Rocky Ridge shall analyze at least one sample of every 1,200 cubic yards in accordance with the paint filter liquids test, as determined by results obtained from conducting method 9095B in SW-846, "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," which is fully incorporated herein as Attachment 1. If the sample does not pass the paint filter liquids test, Stansley or Rocky Ridge shall dry the 1,200 cubic yards, resample, and repeat the process as necessary, prior to mixing with soil. Stansley or Rocky Ridge shall ensure that all DWTM is dried such that it is capable of passing the paint filter liquids test Method 9095B prior to mixing with soil. Rocky Ridge shall maintain a written log to document sampling and analysis of every 1,200 cubic yards of DWTM, and resampling if necessary, and make such log available to Ohio EPA upon request.

8. Stansley or Rocky Ridge shall mix not more than 35% DWTM, which satisfies the requirement of condition No. 7, with not less than 65% soil prior to beneficial use and prior to final placement as a fill to increase elevation and improve drainage. Stansley or Rocky Ridge shall establish protocols for sampling and analyzing the DWTM blend prior to its beneficial use as a fill to increase elevation and improve drainage, in order to evaluate and demonstrate that the final DWTM blend meets the homogeneous mixture of not more than 35% DWTM and not less than 65% soil blend criterion of this LAMP permit.

9. Stansley or Rocky Ridge shall identify a separate designated mixing area to be used for drying (as necessary) the DWTM, and mixing the not more than 35% DWTM with not less than 65% soils, which shall be separate from the area of final placement of DWTM Blend. Stansley or Rocky Ridge shall provide prior notice on a plan view drawing to Ohio EPA of a separate designated mixing area for any mixing of DWTM with soil in accordance with this LAMP permit.

10. Notwithstanding condition No. 9, Stansley or Rocky Ridge shall not be required to designate a separate area for mixing 35,000 cubic yards or less of DWTM mixed and placed after the effective date of this LAMP permit in the L-shaped area surrounded by berms and located immediately south of the quarry on the Property ("Hereinafter Area L") at a ratio of not more than 35% DWTM, capable of passing the paint filter test prior to mixing, to not less than 65% soils. Stansley or Rocky Ridge shall document, in a log available to Ohio EPA upon request, the quantity of DWTM received after the effective date of this Modified LAMP permit into Area L, and shall notify Ohio EPA within seven days of having placed and mixed 35,000 cubic yards of DWTM with not less than 65% or 65,000 cubic yards of soils into Area L. Upon the effective date of this Modified LAMP permit, and after Stansley or Rocky Ridge mixes 35,000 cubic yards of DWTM with not less than 65% or 65,000 cubic yards of soils in Area L, the exception from the condition to designate a separate mixing area pursuant to this LAMP permit shall terminate. This temporary exception from the obligation to designate a separate mixing area in condition No. 9, shall not be construed to relieve Stansley or Rocky Ridge from complying with any condition of this LAMP permit.

11. Prior to mixing, Stansley or Rocky Ridge shall collect and analyze at least one sample per year of DWTM intended for beneficial use and shall collect and analyze additional samples if there are substantial changes in the generation process or the raw materials used. For the purposes of this LAMP permit, a substantial change in the raw materials is a change which results in higher levels of the constituents in Table 1 or additional constituents.
    a. The samples collected shall be representative of the approved materials beneficially used for the calendar year.
    b. Stansley or Rocky Ridge shall have the sample(s) analyzed for the constituents listed in Table 1.
    c. The reported detection limit for the analysis shall be below the limit specified for each constituent in Table 1.
    d. Stansley or Rocky Ridge shall employ analytical methods that generate constituent results in units consistent with the units in Table 1.

12. At a minimum, the DWTM intended for beneficial use shall be analyzed for the constituents specified in the Table 1. Stansley or Rocky Ridge shall not designate, make available, or beneficially use any DWTM that exceeds any constituent limit specified in Table 1.

Table 1

Constituents	Total (mg/kg)*
Arsenic (As)	41
Cadmium (Cd)	39
Copper (Cu)	1500
Lead (Pb)	300
Mercury (Hg)	17
Nickel (Ni)	420
Selenium (Se)	100
Zinc (Zn)	2800

* - dry weight basis

Ohio EPA reserves the right to add constituents to Table 1 as it deems necessary to protect human health or the environment, without modifying this LAMP permit, by providing 30 days notice to Stansley and Rocky Ridge.

13. The following shall be maintained by Stansley or Rocky Ridge for a minimum of five years after the placement of DWTM blend on the property for beneficial use authorized by this permit and made available to Ohio EPA upon request:

    a. Records of the annual volume of DWTM that are beneficially used on the specific property;
    b. A sampling plan detailing the sampling and analysis as required by conditions no. 11 and no. 12;
    c. All laboratory reports of all analyses of DWTM;
    d. Records documenting blending ratios.

14. Stansley and Rocky Ridge shall use Best Management Practices when storing, mixing, and beneficially using DWTM. All activities shall be accomplished in compliance with all applicable state and federal laws and regulations pertaining to environmental protection, including but not limited to the control of air pollution, leachate, and storm water run-on and run-off and protection of ground water and surface water. The Best Management Practices shall include, at a minimum, the following:

    a. Beneficial use, storage and mixing locations shall be at least 300 feet from wells and surface waters used for drinking water or watering livestock;
    b. Beneficial use, storage and mixing of DWTM shall be at least 100 feet from other surface waters of the state as defined in ORC Section 6111.01(H);
    c. Stansley or Rocky Ridge shall take necessary measures to create surface water diversions to catch any solids in runoff and to prevent run-on to the mixing or storage areas, and obtain any necessary ORC Chapter 6111 permits, NPDES permits, PTIs, storm water permits, and underground injection requirements;
    d. Stansley or Rocky Ridge shall take measures to control fugitive dust and other air emissions that may result from activities authorized through this LAMP permit and exemption.

15. Transportation, Storage, mixing and beneficial use of the DWTM blend shall not create a nuisance and shall not adversely affect public safety or health or the environment. Should a nuisance condition develop, or a determination be made by Ohio EPA that storage, mixing or beneficial use of DWTM or DWTM blend is a threat to human health or the environment, then this LAMP permit may be revoked upon written notification from the Director. Immediately upon the effective date of any such revocation, Stansley and Rocky Ridge shall cease beneficial use of the DWTM.

16. Stansley or Rocky Ridge shall not place or cause to be placed for storage, mixing or beneficial use any DWTM or DWTM blend within a sand and gravel pit, a limestone or sandstone quarry, a drinking water source protection area with less than ten feet of low permeable clayey glacial till, a drinking water source protection area that has been determined to be highly susceptible to contamination or a one hundred gallon-per-minute aquifer with less than ten feet of low permeable clayey glacial till.

17. Stansley or Rocky Ridge shall not cause pollution or place or cause to be placed any DWTM or DWTM blend in a location where it causes pollution to any waters of the state, except in accordance with an effective national pollutant discharge elimination system (NPDES) permit. Any unauthorized discharges to waters of the state shall be reported to Ohio EPA by calling 1 (800) 282-9378 within 2 hours of discovery.

18. Stansley and Rocky Ridge shall not place DWTM or the DWTM blend authorized herein into any waters of the United States, including wetlands, subject to regulation under Sections 401 and/or 404 of the Federal Clean Water Act, or in isolated wetlands subject to regulation under ORC Sections 3745.113 and 6111.02 through 6111.029, without first obtaining any required authorizations from the U.S. Army Corps of Engineers and/or Ohio EPA. Stansley and Rocky Ridge shall comply with all applicable provisions of the Underground Injection Control Program, pursuant to Chapter 3745-34 of the Ohio Administrative Code.

19. Stansley or Rocky Ridge shall maintain the isolation distances listed in Table 2 for storage, mixing areas and beneficial use of DWTM or DWTM blend.

Table 2

Isolation distance requirement	To be maintained from
5'	Bedrock
100'	Surface waters of the State
300'	A sinkhole or a UIC Class V drainage well
300'	An occupied structure
300'	A private, potable water source
1000'	A medical care facility

20. In addition to the isolation distances requirements in Table 2, Stansley or Rocky Ridge shall not store, mix or beneficially use DWTM or DWTM blend within the following areas pertaining to public water systems:

    a. Within the sanitary isolation distance a public water system must maintain for a drinking water supply well as established in rule 3745-9-04 of the Administrative Code;
    b. Within the following areas defined in Table 3.

Table 3

Type of public water system	Setback
Community or non-transient, non-community public water system	A drinking water source protection area with less than ten feet of low permeable clayey glacial till or a drinking water source protection area that has been determined to be highly susceptible to contamination.
Transient, non-community public water system using ground water	The drinking water source protection area with less than ten feet of low permeable clayey glacial till or three hundred feet from the water supply well which ever distance is greater.

21. Stansley or Rocky Ridge shall comply with the following provisions regarding Ground Water Monitoring at the property located at 14591 W Toussaint North, Graytown,Ohio:

    a. Within 60 days of these conditions being issued, Stansley or Rocky Ridge shall install at least one ground water monitoring well northwest of well OW-3 at the Rocky Ridge property located at 14591 W Toussaint North, Graytown, Ohio, north of the wetland at the southeast corner of the quarry lake for the purpose of evaluating potential impacts to ground water from recent beneficial use activity conducted at or near the bedrock surface in the southern part of the facility.

    The monitoring well must be constructed the same as observation wells OW-1, OW-2, OW-3, and OW-4 with a screen length of 80 to 100 feet and a total depth of at least 10 feet below the lowest excavated elevation of the adjacent quarry. The well must be properly installed and developed in accordance with Ohio EPA's Technical Guidance Manual for Hydrogeologic Investigation and Ground Water Monitoring prior to sampling and in a manner that will provide a representative sample of ground water.

    b. Sampling and analysis methodology shall be provided in a plan to be submitted to Ohio EPA prior to sampling the well. The sampling and analysis plan shall be consistent with Ohio EPA's Technical Guidance Manual for Hydrogeologic Investigation and Ground Water Monitoring and provide for the collection of representative ground water samples from all monitoring wells sampled as part of these conditions. Samples shall be withdrawn from the wells within 10 feet of the water table. Samples must be analyzed for the parameters in Table 4, including analysis for total metals for metallic/metalloid cations:

Table 4

Parameters		
Alkalinity	Lead	Potassium
Ammonia	Magnesium	Sodium
Arsenic	Manganese	Specific Conductance
Barium	Nickel	Sulfate
Calcium	Nitrate-Nitrite	Temperature
Chloride	Oxidation-Reduction Potential	Total Dissolved Solids
Dissolved Oxygen	pH	Turbidity
Iron	Phosphorus	

c. Ground water samples shall be obtained from the well installed as part of condition no. 21.a. as well as the four observation wells (OW-1, OW-2, OW-3 and OW-4) within 30 days of constructing the monitoring well installed as part of condition no. 21.a. The results from the analysis of any ground water samples shall be submitted to Ohio EPA within 75 days of the samples being collected. Observation wells OW-1, OW-2, OW-3, OW-4 and the well installed as part of condition no. 21.a. shall be sampled semi-annually for two years beginning with the first sample withdrawn as part of this condition and then annually thereafter until released from this obligation by the Director. The samples shall be analyzed for the parameters in Table 4, including analysis for total metals for metallic/metalloid cations.

22. The Director may order an assessment of the ground water quality and corrective actions if the director determines that ground water quality may be impacted by activities approved under this LAMP permit.

23. The Director may add, delete, or change any conditions to this LAMP permit to protect human health or the environment. Upon Ohio EPA's written concurrence with any plan required by this LAMP permit, the plan shall be deemed to be incorporated in and made an enforceable part of this LAMP permit.

24. Each year, by January 31st, Stansley or Rocky Ridge shall submit a report identifying the beneficial use of the DWTM Blend for the previous calendar year and estimated future use. This annual report shall include the following:

a. Total amount, in tons, of DWTM beneficially used the previous calendar year, and location of the beneficial use of such quantity of DWTM Blend;
b. Analytical results for any analyses performed the previous calendar year;
c. Total amount, in tons, of DWTM stored on the Property at the time of the annual report;
d. An estimate, in tons, of the amount of stored DWTM and DWTM Blend expected to be used the following calendar year on the property;

e. A certification statement. The certification statement shall include the following language, and be signed by an authorized representative of Stansley Industries, Inc. and Rocky Ridge Development LLC:

"I certify, under penalty of law, that the information used to determine compliance with the requirements contained in Chapter 6111. of the Ohio Revised Code, and all rules adopted thereunder, for the period beginning (insert date of last certification statement) and ending (insert current certification statement date) was prepared under my direction and supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate this information. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment."

The annual report shall be sent to the following address:

Ohio EPA - DMWM
Beneficial Use Unit
P.O. Box 1049
Columbus, OH 43216-1049

Stansley or Rocky Ridge shall not store a quantity of DWTM or DWTM blend at any property that exceeds the estimated projected amount in the annual report submitted for that property in accordance with this condition.

25. The Director shall be notified in writing within seven days if Stansley or Rocky Ridge discovers noncompliance with this LAMP permit. Issuance of this LAMP permit does not relieve Stansley or Rocky Ridge of the duty to comply with all applicable federal, state, and local laws, ordinances.

26. This permit to beneficially use DWTM in a soil blend as general fill shall expire at midnight on the expiration date shown above. In order to receive authorization to beneficially use DWTM in a soil blend beyond the above date of expiration, Stansley or Rocky Ridge shall submit such information and forms as are required by Ohio EPA not later than 180 days prior to the above date of expiration.

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 which the Commission, in its discretion, may reduce 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:

Environmental Review Appeals Commission
77 South High Street, 17th Floor
Columbus, Ohio 43215

Sincerely,

Craig W. Butler
Director

cc: City of Toledo, Dept. of Utilities
Elizabeth Wick, DSW, NWDO
Mike Reiser, DMWM, NWDO
Shannon Nabors, Chief, NWDO

METHOD 9095B

PAINT FILTER LIQUIDS TEST

1.0 SCOPE AND APPLICATION

1.1 This method is used to determine the presence of free liquids in a representative sample of waste.

1.2 The method is used to determine compliance with 40 CFR 264.314 and 265.314.

2.0 SUMMARY OF METHOD

2.1 A predetermined amount of material is placed in a paint filter. If any portion of the material passes through and drops from the filter within the 5-min test period, the material is deemed to contain free liquids.

3.0 INTERFERENCES

3.1 Filter media were observed to separate from the filter cone on exposure to alkaline materials. This development causes no problem if the sample is not disturbed.

3.2 Temperature can affect the test results if the test is performed below the freezing point of any liquid in the sample. Tests must be performed above the freezing point and can, but are not required to, exceed room temperature of 25 °C.

4.0 APPARATUS AND MATERIALS

4.1 Conical paint filter – Mesh number 60 +/- 5% (fine meshed size). Available at local paint stores such as Sherwin-Williams and Glidden.

4.2 Glass funnel -- If the paint filter, with the waste, cannot sustain its weight on the ring stand, then a fluted glass funnel or glass funnel with a mouth large enough to allow at least 1 in. of the filter mesh to protrude should be used to support the filter. The funnel should be fluted or have a large open mouth in order to support the paint filter yet not interfere with the movement, to the graduated cylinder, of the liquid that passes through the filter mesh.

4.3 Ring stand and ring, or tripod.

4.4 Graduated cylinder or beaker -- 100-mL.

5.0 REAGENTS

5.1 None.

6.0 SAMPLE COLLECTION, PRESERVATION, AND HANDLING

A 100-mL or 100-g representative sample is required for the test. If it is not possible to obtain a sample of 100 mL or 100 g that is sufficiently representative of the waste, the analyst may use larger size samples in multiples of 100 mL or 100 g, i.e., 200, 300, 400 mL or g. However, when larger samples are used, analysts shall divide the sample into 100-mL or 100-g portions and test each portion separately. If any portion contains free liquids, the entire sample is considered to have free liquids. If the sample is measured volumetrically, then it should lack major air spaces or voids.

7.0 PROCEDURE

7.1 Assemble test apparatus as shown in Figure 1.

7.2 Place sample in the filter. A funnel may be used to provide support for the paint filter. If the sample is of such light bulk density that it overflows the filter, then the sides of the filter can be extended upward by taping filter paper to the inside of the filter and above the mesh. Settling the sample into the paint filter may be facilitated by lightly tapping the side of the filter as it is being filled.

7.3 In order to assure uniformity and standardization of the test, material such as sorbent pads or pillows which do not conform to the shape of the paint filter should be cut into small pieces and poured into the filter. Sample size reduction may be accomplished by cutting the sorbent material with scissors, shears, a knife, or other such device so as to preserve as much of the original integrity of the sorbent fabric as possible. Sorbents enclosed in a fabric should be mixed with the resultant fabric pieces. The particles to be tested should be reduced smaller than 1 cm (i.e., should be capable of passing through a 9.5 mm (0.375 inch) standard sieve). Grinding sorbent materials should be avoided as this may destroy the integrity of the sorbent and produce many "fine particles" which would normally not be present.

7.4 For brittle materials larger than 1 cm that do not conform to the filter, light crushing to reduce oversize particles is acceptable if it is not practical to cut the material. Materials such as clay, silica gel, and some polymers may fall into this category.

7.5 Allow sample to drain for 5 min into the graduated cylinder.

7.6 If any portion of the test material collects in the graduated cylinder in the 5-min period, then the material is deemed to contain free liquids for purposes of 40 CFR 264.314 and 265.314.

8.0 QUALITY CONTROL

8.1 Duplicate samples should be analyzed on a routine basis.

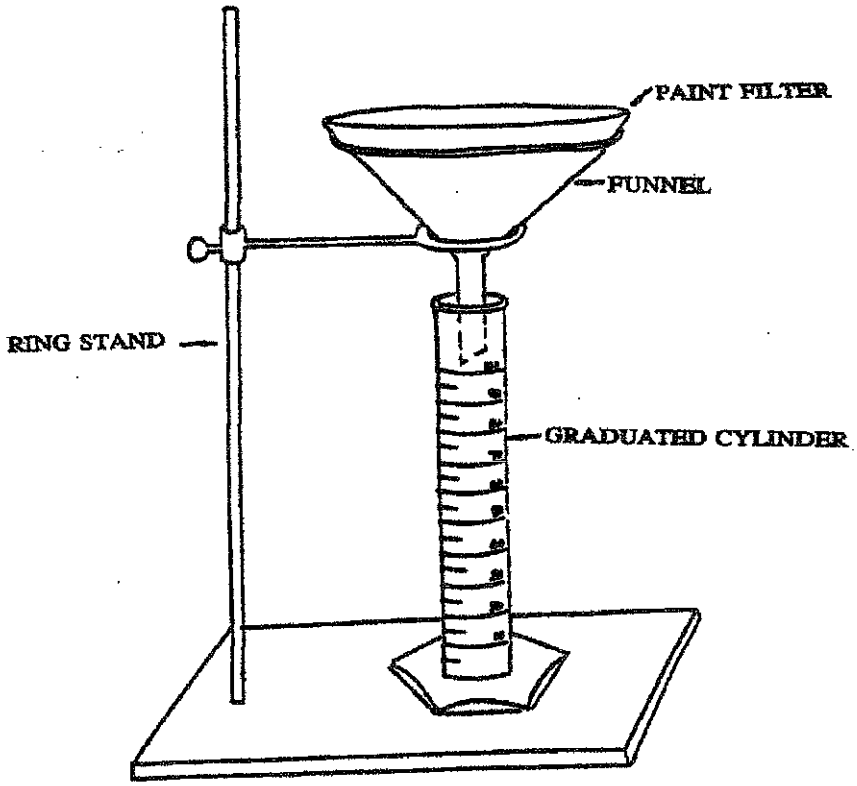
9.0 METHOD PERFORMANCE

9.1 No data provided.

10.0 REFERENCES

10.1 None provided.

FIGURE 1
PAINT FILTER TEST APPARATUS



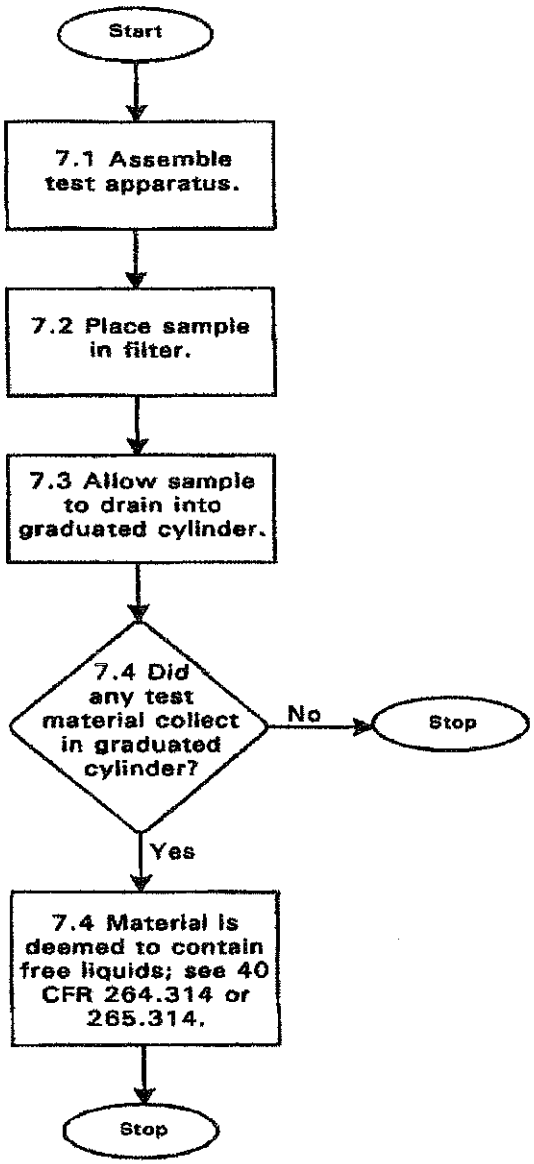

Start
7.1 Assemble test apparatus.
7.2 Place sample in filter.
7.3 Allow sample to drain into graduated cylinder.
7.4 Did any test material collect in graduated cylinder?
No
Stop
Yes
7.4 Material is deemed to contain free liquids; see 40 CFR 264.314 or 265.314.
Stop

EXHIBIT L

Michael T. Reif
Benton Township Zoning Inspector
15181 W. Rock Bottom Dr.
Graytown, OH 43432
419-356-3163

28th December 2016

Craig Butler, Director
Ohio EPA
P.O. Box 1049
Columbus, OH 43216-1049

Dear Mr. Butler,

It has recently come to my attention that the EPA may not realize that zoning violations have been filed against RRD (Rocky Ridge Development). Violation #1 was filed on October 13, 2016, and violation #2 was filed on November 2, 2016. Both violations were filed by the Ottawa County Prosecutor, Mark Mulligan, due to the fact that RRD is digging cells and dumping Drinking Water Treatment Residuals ("DWTR") from the Collins Park Water Treatment Plant lagoons onto property that is zoned A-3 Agriculture. I have verified these violations through maps that are kept at the Ottawa County Regional Planning office. RRD has been dumping on the south end of the property in the A-3 zoned area.

It has also been brought to my attention that RRD is in the process of seeking pond approval for an approximately 20 acre pond with a depth of 35 feet through the Ottawa County Engineer's Office. If they meet all criteria requested for that approval, they will then follow up by applying for a permit with Benton Township Zoning. I feel this information should be shared with your office as well.

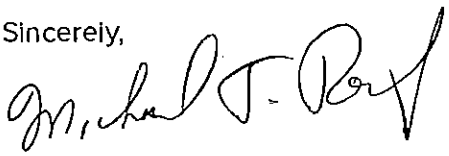
I am looking for your input on the following details. How can I in good faith provide a permit to harvest dirt from one area to be used in another area that is not zoned correctly and is under violations? Add to this the fact that they are preparing to have dirt to fill in the quarry if the EPA provides them with yet another permit. If you view the map provided, you will see that the eastern

half of the quarry is zoned M-3, and the western half is zoned A-3. This, in turn, creates a conflict. Their proposal includes the use of the entire quarry, including both the eastern and western halves. My question is, how do they fill half of a quarry? Or, do they plan to continue with another violation? I will be asking legal advice on this matter, but I feel your office needs to be informed as well.

It was mentioned to me that if the EPA issues a permit, then zoning has no say over the matter. I am asking for clarification on this matter, and also whether or not EPA will issue a permit for land that is not correctly zoned. My assumption is that with the review of all of the information collected on this matter, these offices can work together to come to a solution. I feel that your office can in no way issue a permit without all of the correct information. I feel it is my duty as Benton Township Zoning Inspector to bring to your attention that RRD's plan is proposed on land that is not in it's entirety properly zoned for their intended purpose. To add to this, I must also share that the citizens living within this township are not in favor of this project proceeding. Their concern resides with the question of what consequences will arise if the work process is not completed correctly as stated in EPA guidelines.

Thank you for your consideration with this matter. I look forward to your response.

Sincerely,



Michael T. Reif
Benton Township Zoning Inspector

EXHIBIT M

BENTON TOWNSHIP BOARD OF TRUSTEES
OTTAWA COUNTY
P.O. Box 7, 1670 Walker Street,
Graytown, Ohio 43432

TRUSTEES
James R. Buhro 419-707-2849
Wesley D. Gahler 419-351-3177
Michael Milbrodt 419-376-6089

FISCAL OFFICER
Gayle S. Millinger
Phone 419-707-1070
Fax No. 419-862-1738

May 17, 2016

Ohio Environmental Protection Agency
Attn.: John Pasquarette
Ohio EPA - DMWM
Lazarus Government Center
50 W. Town St., Suite 700
Columbus, OH 43215

The Benton Township Trustees of Ottawa, Ohio would like to share our concerns about the operation of the Rocky Ridge Development further known as Stansley Industries located at 3017 N State Route 590 Graytown , Ohio 43432.
The township wants to inform the EPA that we are **opposed** to any additional permits being approved for this operation.
This is a quarry that is the main water supply vein for the Benton Township residents. Many residents have informed us of their concerns as to why Benton Twp. is getting all the dumped wastes from the Toledo Water Treatment Plant. Their concern is the waste getting washed into the quarry and contaminating all the water wells in the area.
It is under the understanding of the Trustees that the Rocky Ridge Development group is looking to apply for an additional EPA permit to pump water down to a ledge where they can dump an additional amount of waste lime. This rock ledge is in the main vein for the water of the Township residents in the area.
We as Trustees and the residents of Benton Twp. would also like the EPA to look into the total operation. Attached is where the Stansley Industries was shut down on a similar operation and that concern was because of run-off into the storm sewers and we are dealing with drinking water and the safety of our citizens. Again the quarry is the main vein to the wells in the area.

Thank you for your time in this matter and could you please respond to our concerns to any of the trustees listed above. mmilbrodt@bentontwp.org

Sincerely,

James R Buhro, Trustee President
Benton Township Board of Trustees
Ottawa Co., Ohio

EXHIBIT N

Ohio Environmental Protection Agency

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

Re: Stansley Industries
Notice of Violation (NOV)
NOV
NPDES
Ottawa County
2IJ00104

February 27, 2017

Mr. Scott Stansley
Stansley Industries, Inc.
3793 Silica Road
Sylvania, Ohio 43560

Subject: Notice of Violation

Dear Mr. Stansley:

On January 18, 2017m Justin Williams and I conducted an Ohio EPA storm water compliance Inspection of the Rocky Ridge Development in Graytown, Ohio. We met with Mr. John Taddonio and discussed that the goal of our inspection was to determine your facility's compliance with Ohio's environmental laws and regulations as found in Chapter 6111 of the Ohio Revised Code (ORC) and the terms and conditions of Stansley Industries' National Pollutant Discharge Elimination System (NPDES) permit #2IJ00104*AD, which was issued on November 1, 2015.

Findings

We observed the following violations of Ohio's environmental laws and regulations and the Stansley Industries' permit terms and conditions. In order to bring Stansley Industries into compliance, we recommend promptly addressing these violations within 14 days of receipt of this letter.

1. **ORC Chapter 6111.07 (A):** No person shall violate or fail to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection pursuant to those sections. Each day of violation is a separate offense.

   NPDES Permit Terms and Conditions Part II.B.: Soil Stabilization. Stabilization of disturbed areas shall, at a minimum, be initiated in accordance with the time frames specified in the following tables:

Table 1: Permanent Stabilization

Area requiring permanent stabilization	**Time frame to apply erosion controls**
Any areas that will lie dormant for one year or more	Within seven days of the most recent disturbance
Any areas within 50 feet of a surface water of the state and at final grade	Within two days of reaching final grade
Any other areas at final grade	Within seven days of reaching final grade within that area

Table 2: Temporary Stabilization

Area requiring temporary stabilization	**Time frame to apply erosion controls**
Any disturbed areas within 50 feet of a surface water of the state and not at final grade	Within two days of the most recent disturbance if the area will remain idle for more than 14 days
For all construction activities, any disturbed areas that will be dormant for more than 14 days but less than one year, and not within 50 feet of a surface water of the state	Within seven days of the most recent disturbance within the area For residential subdivisions, disturbed areas must be stabilized at least seven days prior to transfer of permit coverage for the individual lot(s).
Disturbed areas that will be idle over winter	Prior to the onset of winter weather

(a) There were numerous areas on the site that were not stabilized and not being actively worked.

(b) **Requested Action:** Stabilize all inactive areas per the above tables. The storm water pollution prevention plan (SWP3) for this site shall have instructions for winter stabilization. The areas of concern include the berms around the ponds where gullies and rills had formed, berms around the area of the former farmland, and any other area that remains dormant for more than 14 days. Areas that had been permanently seeded but do not have 70% or more permanent stabilization shall be temporarily stabilized until permanent stabilization can be utilized.

The area of the former farmland on the southeast corner, the berms on the south side of the site bordering the former farmland, and any other area of the site that drains to the bedrock fissure on the south side of the site, needs to be graded and stabilized as soon as possible.

Conclusion

Ohio EPA requests that Stansley Industries promptly undertake the necessary measures to return to compliance with Ohio's environmental laws and regulations. Within 14 days of receipt of this letter you must provide documentation to Ohio EPA of the actions taken and/or will be taken to resolve the violations cited above. Documentation of steps taken to return to compliance includes but is not limited to written correspondence, updated policies, and photographs, as appropriate and may be submitted via the postal service or electronically to patricia.tebbe@epa.ohio.gov.

Failure to comply with Chapter 6111.07 of the ORC and rules promulgated thereunder may result in an administrative or civil penalty. It is imperative that you return to compliance. If circumstances delay resolution of violations, Stansley Industries is requested to submit written correspondence describing the steps that will be taken by a date certain to attain compliance.

Please note that the submission of any requested information to respond to this letter does not constitute waiver of the Ohio EPA's authority to seek administrative or civil penalties as provided in Chapter 6111.09 of the ORC.

Should you have any questions, please contact me at (419) 373-3016 or via email at patricia.tebbe@epa.ohio.gov.

Sincerely,

Patricia A. Tebbe, P.E., MPH, CPESC
Division of Surface Water

/jlm

ec: Scott Sheerin, DSW-CO
Tom Poffenbarger, DSW-NWDO
Justin Williams, DSW-NWDO
Tracking

pc: John Taddonio, Rocky Ridge Development LLC