

RESOLUTION E-2011

RESOLUTION TO APPROVE THE TRANSFER OF THE 2011 CONSTRUCTION AND DEMOLITION DEBRIS LANDFILL OPERATING LICENSE FROM NEW BALTIMORE C&DD, LTD. TO NEW BALTIMORE ,LLC.

The Board of Health of the Hamilton County General Health District met in regular session on October 10, 2011 with the following members present:

Thomas Chatham, President	<u>absent</u>
Jim Brett, Vice President	<u>present</u>
Kenneth G. Amend, M.D.	<u>present</u>
Tracey Puthoff, Esq.	<u>present</u>
Mark A. Rippe	<u>present</u>

Mrs. Puthoff moved for adoption of the following resolution:

RESOLUTION TO APPROVE THE TRANSFER OF THE 2011 CONSTRUCTION AND DEMOLITION DEBRIS LANDFILL OPERATING LICENSE FROM NEW BALTIMORE C&DD, LTD. TO NEW BALTIMORE, LLC.

WHEREAS, the Ohio Revised Code, Section 3714.05, authorizes the Board of Health of the Hamilton County General Health District to provide for the inspection, licensing and enforcement of standards governing construction and demolition debris facilities; and

WHEREAS, the Ohio Revised Code, Section 3714.06, authorizes the Board of Health of the Hamilton County General Health District to approve transfer of operating licenses of construction and demolition debris facilities; and

NOW, THEREFORE BE IT RESOLVED that the Board of Health of the Hamilton County General Health District finds that New Baltimore C&DD Ltd., and New Baltimore LLC, have met the requirements of Ohio Administrative Code Sections:

3745-37-06 Transfer of License
3745-400-11 Operation of Facilities
3745-400-13 Financial Assurance
3745-400-14 Wording of Financial Instruments

BE IT FURTHER RESOLVED, that under the authority of Ohio Revised Code Section 3714.06, the Hamilton County General Health District Board of Health approves the transfer of the 2011 Operating License of New Baltimore C&DD Ltd. to New Baltimore LLC.

BE IT FURTHER RESOLVED, that the conditions attached to the 2011 Operating License of New Baltimore C&DD must be met by New Baltimore LLC and these conditions have been

attached to this resolution and will be incorporated into the 2011 Operating License for New Baltimore LLC.

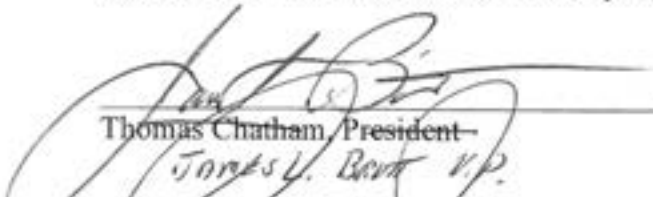
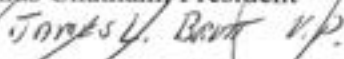

BE IT FURTHER RESOLVED, that the license granted by this Resolution may be suspended or revoked for violation of any section of Ohio Revised Code 3714 or a term or condition of the facility's license.

BE IT FURTHER RESOLVED, that this Board of Health of the Hamilton County General Health District find and determine that all formal actions relative to passage of this resolution were taken in an open meeting of this board and that all deliberations of this board and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with the applicable legal requirement, including Sections 121.22 of the Ohio Revised Code.


Dr. Amend seconded the resolution, upon roll call, the vote was as follows:

Thomas Chatham, President	<u>absent</u>
Jim Brett, Vice President	<u>aye</u>
Kenneth G. Amend, M.D.	<u>aye</u>
Tracey Puthoff, Esq.	<u>aye</u>
Mark A. Rippe	<u>aye</u>

Board of Health of the Hamilton County General Health District

Attest:  10-10-11
Thomas Chatham, President Date

Jones L. Burt, V.P.
 Oct. 10, 2011
Timothy I. Ingram, Health Commissioner Date

This resolution was approved as to form by the office of the Hamilton County Prosecuting Attorney, Joseph T. Deters, Prosecutor.

By:  October 10, 2011
Nee Fong Chin Date
Chief Assistant Prosecuting Attorney

2011

OhioEPA

2011

Construction and Demolition Debris Facility License

License Expires December 31, 2011

Facility: New Baltimore CD&D Landfill Ltd (CID:54307)
6950 River Rd
New Baltimore, OH 45030

This license has been issued in accordance with the requirements of state law, is subject to revocation or suspension for cause, and is not transferable without the consent of the Board of Health or the Director of the Ohio Environmental Protection Agency.

Licensing Authority: Hamilton Co - CDDL

Conditions of Licensure

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

1. All applicable requirements of Ohio Revised Code Chapters 3714., 3734., 6111., and 3704.
2. All applicable requirements of Ohio Administrative Code Chapters 3745-37 and 3745-400.
3. Plans, other authorizing documents and administrative and judicial orders applicable to this facility and as approved by the Ohio Environmental Protection Agency and/or the licensing authority.
4. By applying for and accepting this license, the licensee specifically consents in advance and agrees to allow the Director, the Health District, or an authorized representative, to enter upon the licensee's premises at any reasonable time during the construction and/or operation of the facility for the purpose of inspecting, conducting tests, collecting samples, or examining records or reports pertaining to construction, modification, installation, or operation of the facility. The licensee hereby acknowledges and agrees that any and all rights of access granted herein shall not be deemed to be unreasonable or unlawful under Ohio Revised Code Sec. 3714.08.

The licensee, its agents, employees, and all others in active concert with said licensee shall maintain and operate the construction and demolition debris facility to which the license pertains in a sanitary manner so as not to create a nuisance, create a fire hazard, cause or contribute to water pollution, or create a health hazard. This license shall not be construed to constitute a defense to any civil or criminal action brought by the State of Ohio or any duly authorized representative thereof to enforce the provisions of Chapters 3714., 3734., 3767., 6111., or 3704. of the Ohio Revised Code, or the regulations issued thereunder.

Issuance of this license does not relieve the licensee of the duty to comply with all applicable federal, state, and local laws, regulations and ordinances.

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


Health Commissioner

Dec. 16, 2010
Date Issued

Hamilton County General Health District



PREVENT. PROMOTE. PROTECT.

Timothy J. Ingram
Health Commissioner

250 William Howard Taft Road, 2nd Floor
Cincinnati, OH 45219

Phone 513.946.7800
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hamiltoncountyhealth.org

New Baltimore C&DD Landfill Ltd. (CID:54307) Construction and Demolition Debris Facility 6950 River Road, Harrison, Ohio, 45030

2011 Special Terms and Conditions

License Summary

This summary is an attachment to the issuance of the 2011 License for New Baltimore C&DD Landfill, Ltd. (Facility). The Facility is owned and operated by New Baltimore C&DD Landfill, Ltd., Ken Henke – President. The Facility received its 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010 licenses. The Facility is defined within a 25.67 acre plot in Crosby Township, Hamilton County.

Inspections

The Facility has been inspected by Hamilton County General Health District (Health District) 26 times during the fourth quarter of 2009 and the first three quarters of 2010 (October 1, 2009 through September 30, 2010). The inspections were conducted on the following dates:

4 TH QUARTER 2009		1 ST QUARTER 2010	
10/05/09	12/08/09	01/13/10*	03/19/10
10/09/09	12/15/09	01/20/10	03/29/10
11/06/09	12/28/09	02/02/10	
11/25/09		02/26/10	
2 ND QUARTER 2010		3 RD QUARTER 2010	
04/07/10	05/27/10*	07/14/10	09/15/10
04/23/10	06/16/10	07/15/10	09/22/10
04/30/10	06/23/10	08/27/10	
05/18/10		08/31/10	

A notice of violation letter (NOV) dated January 19, 2010, was issued to New Baltimore C&DD Landfill during the first quarter, 2010, for an inspection conducted on January 13, 2010, in which solid waste, in excess of 30 gallons, but less than 1 cubic yard, was observed in the working face.

A notice of violation letter (NOV) dated June 1, 2010, was issued to New Baltimore C&DD Landfill during the second quarter, 2010, for an inspection conducted on May 27, 2010, in which solid waste, in excess of 30 gallons, but less than 1 cubic yard, was observed in the working face.

The ground-water monitoring wells at the New Baltimore C&DD Landfill were monitored quarterly in 1998, annually in 1999, quarterly in 2000 and annually from 2001 through 2010. Three wells are sampled as part of the ground-water monitoring network (MW-1R, MW-2 and NMW-3R). Two monitoring wells (MW-1R and MW-2) are down-gradient of the limits of waste. MW-1 was replaced with MW-1R prior to the 2007 sampling event. One monitoring well (MW-3R) is up-gradient of the landfill but analysis of data from this well indicated that this data was not appropriate to include as background data because data from MW-3R was determined to be statistically different from data from the original up-gradient well (MW-3A). (Monitoring well MW-3A was replaced prior to the 2004 sampling event, but the data from this well is still used as site background data.) In addition, data from MW-3R was determined to be trending upwards. Ground-water quality will continue to be monitored over time.

Since 1998, the monitoring wells have been sampled for parameters 1-19 in the Appendix to 3745-400-10. In 2009, sampling for arsenic, chromium and copper were added to the sampling list. During 2010, samples were analyzed for dissolved and total metals.

During the 2010 sampling event, one maximum contaminant level (MCL), two secondary maximum contaminant levels (SMCL), and a health advisory level was exceeded, as follows:

- a) The MCL for arsenic (0.010 mg/L) was exceeded in down-gradient wells MW-1R and MW-2;
- b) The SMCL for iron (0.3 mg/L) was exceeded in all wells;
- c) The SMCL for manganese (0.05 mg/L) was exceeded in down-gradient monitoring well MW-2 and in up-gradient monitoring well MW-3R; and
- d) The lower health advisory for sodium (30 mg/L) was exceeded in down-gradient monitoring well MW-2.

In 2009, prediction limits were determined for fourteen inorganic parameters that have been sampled since 1998: calcium, chloride, chemical oxygen demand (COD), iron, potassium, magnesium, manganese, sodium,

ammonia as N, nitrate/nitrite, lead, phosphorus, sulfate and zinc. Prediction limits were not determined for arsenic, chromium and copper because the datasets were not large enough. Calculated prediction limits need only be updated when eight additional data points are available. Therefore, results from the 2010 ground-water sampling were compared to these prediction limits.

A discussion of the parameters that exceeded their prediction limits follows:

- a) *Chloride* - Chloride ranged from 3.6 to 22.0 mg/L. The prediction limit for chloride (14.5 mg/L) was exceeded in well MW-1R. The secondary drinking water standard for chloride (250 mg/L) was not exceeded in any monitoring wells. Chloride data from all wells show statistically significant upward trends. Staff will continue to monitor the chloride concentrations and trends in all wells;
- b) *Iron* - Iron ranged from 0.609 to 15.2 mg/L. The prediction limit for iron (1.4 mg/L) was exceeded at both down-gradient wells. The secondary MCL for iron (0.3 mg/L) was exceeded at all wells. Iron in down-gradient well MW-1R shows a statistically significant upward trend. Staff will continue to monitor the iron concentration in all wells;
- c) *Potassium* - Potassium ranged from 1.4 to 1.6 mg/L. The prediction limit for potassium (1.28 mg/L) was exceeded at both down-gradient wells. Potassium in down-gradient monitoring well MW-2 shows a statistically significant downward trend. Staff will continue to monitor the potassium concentration in all wells;
- d) *Manganese* - Manganese ranged from 0.046 to 0.574 mg/L. The prediction limit for manganese (0.0699 mg/L) was exceeded in down-gradient well MW-2. The SMCL (0.05 mg/L) was exceeded in wells MW-2 and MW-3R. Manganese in down-gradient well MW-2 shows a statistically significant downward trend and manganese in well MW-3R shows a statistically significant upward trend. Staff will continue to monitor the manganese concentration in these wells;
- e) *Sodium* - Sodium ranged from 15.2 to 36.0 mg/L. The prediction limit for sodium (7.64 mg/L) was exceeded at both down-gradient wells. The lower health advisory level for sodium (30 mg/L) was exceeded in down-gradient well MW-2. Sodium data from down-gradient well MW-2 shows a statistically significant downward trend and sodium in well MW-3R shows a statistically significant upward trend. Staff will continue to monitor the sodium concentration in these wells; and

- f) *Ammonia-Nitrogen* - Ammonia ranged from 0.24 to 4.37 mg/L. The prediction limit for ammonia-nitrogen (3.60 mg/L) was exceeded at one down-gradient well (MW-2). The USEPA health advisory (30 mg/L) was not exceeded in this well. Staff will continue to monitor the ammonia-nitrogen concentration in this well.

The prediction limits for COD, nitrate/nitrite, lead, phosphorus, sulfate and zinc were not exceeded at the monitoring wells.

The 2009 License Application for New Baltimore CD&D Landfill included a modification request increasing the ALDA (Active Licensed Disposal Area) by 9 acres, making the ALDA 22 acres. Design plans indicate the excavation of clay in this area for use as on-site cap material. Excavation plans extend below the site water table. On October 13, 1999, the Health District and the Applicant entered into an agreement specifying how excavations and backfilling (for a two acre area at the time) was to occur to ensure some level of protection of groundwater. The 2000 License Additional Terms and Conditions extended this agreement to the remainder of the ILDA or the entire 22 acres.

Though the previously agreed upon conditions will be honored, the Health District recommends that a liner and leachate collection system be installed in this area to avoid potential problems with groundwater contamination. The increase in ALDA was included with the 2010 license in accordance with the following Additional Terms and Conditions, item #10 specifically addressing excavations.

In 2009, a modification request was made by the Facility with design changes affecting surface water control features and final grades. This modification is included with the 2010 license with the following Additional Terms and Conditions, Item #11 specifically addressing outstanding issues.

This summary is provided solely for informational purposes and does not constitute a part of, or otherwise affect, the attached license.

Special License Terms and Conditions

- 1) The Facility shall perform annual sampling of the groundwater wells (MW-1R, MW-2, and MW-3R) for parameters one (1) through nineteen (19) in Appendix of Rule OAC 3745-400-10, as well as the following compounds: Arsenic, Chromium, and Copper.

The Health District is to be notified at least seven days prior to collection of samples so that split samples may be obtained.

Results, potentiometric map, and report are due to the Health District by August 30, 2011. The groundwater report must meet the requirements of OAC 3745-400-10 (B). If statistics are performed, documentation must be submitted in the groundwater report showing all supporting calculations for statistical evaluations and determinations.

Failure to submit groundwater results, potentiometric map, and report by the due date will result in the delay of the license application review and/or issuance of the 2012 license.

- 2) The Facility shall use low flow sampling during monitoring to reduce turbidity levels below 5 NTUs. If the 5 NTUs are not practical to achieve after employing sampling and developing techniques acceptable to the Health District, the Facility may suggest alternate achievable levels to the Health District.
- 3) The Facility shall follow the Fire Prevention Plan as submitted and approved by the Health District (received January 2003 and updated on February 15, 2007). The exposed combustible waste materials will be completely covered at the end of every month with noncombustible material. Cover shall be reapplied in the former working face areas as necessary to prevent exposure of C&DD materials.
- 4) The Health District is to be notified in writing before the Facility intends to accept any fly ash, bottom ash, or spent foundry sand. The notification shall include the origin of the material and toxic characteristic leaching procedure results when appropriate. The Health District will notify the Facility of the Health District's approval in writing.
- 5) The Facility shall continue to pick solid waste from the unloading zone prior to pushing into the working face. All solid waste received by the Facility is to be rejected, removed, and properly disposed. Debris that has been spread, compacted, and buried or partially buried will be considered accepted for disposal.
- 6) The Facility shall submit the financial assurance instrument in accordance with OAC 3745-400-13 (A)(1) not later than 30 days after issuance of this license [OAC 3745-400-13 (A)(2)].

- 7) The Facility shall remove and properly dispose of solid waste containers to avoid causing a nuisance or health hazard. Full containers of solid waste shall be removed from the facility within 7 days.
- 8) The Facility shall monitor the top portion of the landfill for standing water and re-grade to promote positive drainage.
- 9) The following is in response to the corrective action plan presented by New Baltimore on November 7, 2007. Each is a measurable countering the seven changes presented by New Baltimore, respectively:
 - A. Monthly reports will be submitted by the 15th of the following month indicating the loads rejected each month including: volume and customer name. In addition, waste removed from the incoming loads and their ultimate disposal location including proof of proper disposal will be reported.
 - B. No measurable
 - C. For key landfill staff, attendance at any formal C&DD operator training courses provided by the Health District or Ohio EPA is required.
 - D. No measurable - inspections will document staffing levels.
 - E. The on-site office will be fully operational and in use with all utilities connected by December 31, 2007.
 - F. The elevated platform or video camera will remain in place and be used to inspect incoming loads prior to acceptance.
 - G. The Applicant shall employ sufficient personnel to manage the flow of loads into the landfill.
- 10) In regards to excavation and mining of clay, as previously agreed upon in the "Order Granting Modification to Expand the Active Licensed Disposal Area Under the Terms and Conditions Contained Herein", dated October 13, 1999; and the "Additional Terms and Conditions to the Year 2000 Operating License", dated December 6, 1999, the Facility shall abide by the following (with A-E derived from these prior agreements):
 - A. The Facility shall not place waste below an elevation corresponding to two feet above the site water table except as stated below. The site water table shall be determined to be 540 feet amsl at MW-3A [now 3R] and parallel to the north property line. Similarly, for purposes of this agreement, the site water table shall be determined to be 530 amsl at MW-1 [now 1R] and shall be the same elevation along a line through MW-1 [now 1R] and parallel to the south property line. The water table shall be determined to have a uniform slope between these two lines, such that halfway between the two points shall be determined to have an elevation of 535 feet amsl.
 - B. All areas excavated below the site water table shall be backfilled with

- sand, gravel, silt and clay to an elevation that corresponds to two feet above the site water table. Provided however, that the Facility may place clean hard fill as the top 35 percent of the fill to reach the required elevation. Clean hard fill shall be defined as construction and demolition debris that consists only of reinforced and non-reinforced concrete, refractory brick and mortar, block, tile and/or stone. Clean hard fill does not include materials contaminated with hazardous wastes, solid wastes, infectious wastes or petroleum products.
- C. The Facility shall not remove clay from any area where the clay is less than 2 feet thick, and shall leave a minimum of two feet of clay in those areas where clay is being mined.
 - D. Prior to emplacement of any waste, the entire two acre area [or now phase] shall be graded, staked, and the elevations surveyed and certified by the Facility.
 - E. In each area where the Facility has completed excavation of clay for its final cap and is prepared to begin backfilling with sand, gravel and other soil materials, the Facility shall notify the Health District at least seven days prior to backfilling in the excavated area. Furthermore, once the Facility has completed the backfilling with sand, gravel and soil materials, the Applicant will again notify the Health District at least seven days prior to placement of any clean hard fill materials into the excavated area.
 - F. In addition to the preceding, the following mitigating factors and controls will be in effect:
 - i. Waste encountered in the process of excavating clays will be hauled to the working face for proper disposal in accordance with waste acceptance requirements.
 - ii. All backfilling soils and clean hard fill must be logged on the daily log **and a separate tracking form** including the site of origin and quantity.
 - iii. Soil loads are to be available for inspection by the Health District.
 - iv. Any soils deemed to be suspect may be isolated, analyzed, and excluded from use as fill at the discretion of the Health District.
 - v. Under no circumstances shall waste be placed in water. Backfilling will continue above pre-determined groundwater elevations until a minimum of 2' separation exists between water and waste.
 - vi. Excavation and Fill must be performed in phases and delineated on a map. Previously required surveying, certifications, and notifications must be implemented. Restated here for emphasis.
 - a) At least seven days prior to backfilling an excavated area Health District must be notified.
 - b) At least seven days prior to backfilling an area with clean hard fill the Health District must be notified.

- c) Prior to emplacement of any waste, the area shall be graded, staked, and the elevations surveyed and certified by the owner.
 - vii. Test borings or test pits are to be performed in the presence of Health District staff to verify 2' clay remains after excavation at the rate of one demonstration per acre.
 - viii. The Health District may perform split-sampling of groundwater monitoring wells and may also include samples of the on-site production well. Monitoring analysis may include parameters 1-77 of OAC 3745-400-10 Appendix and Pesticides US EPA Method 8081. If results of sampling indicate a statistically significant increase from upgradient to downgradient wells, subsequent sampling of all on-site wells for parameters 1-77 of OAC 3745-400-10 Appendix and Pesticides US EPA Method 8081 will be the financial responsibility of the Facility at a frequency deemed adequate to assess the extent of contamination.
- 11) The 2009 Modification request is granted with the following conditions, which were identified as outstanding issues to the 10-23-09 NOD response letter from Bowser Morner:
- A. Any backfilling under condition (11)(B) of these terms of fine grained soils into standing water will be problematic with respect to stability (compaction) of the fill. Should fine grained soils (silts and/or clays) be used for backfill below the water table, they must be placed dry (e.g., removal of ground water from the excavation prior to placement).
 - B. Excavated soil from the facility will be used only for landfill operations such as capping of the landfill, vegetative cover, and soil cover. Without a mining permit, sale of excess soil material is prohibited.
 - C. To ensure sound engineering methods, a certification report(s), for the construction of structural berms composed of clean hard fill, shall be completed and submitted to the Health District in accordance with OAC 3745-400-08(A)(2) and Appendix B and C of the 10-23-09 Response to the 2009 License Modification Notice of Deficiencies. These are areas that were redesigned in the modification to increase the overall fill height and maintain a maximum overall 25% slope.

End of Special Terms and Conditions

In the Matter of:

New Baltimore C&DD Landfill, Ltd.
6950 River Road
New Baltimore, Ohio 45030

Applicant.

It is hereby agreed by and among the parties to the following:

I. STIPULATED CIVIL PENALTIES

If during the course of an inspection during the operating license of 2011, the Health District's site inspector should document solid waste in the working face in an amount which exceeds the volume of a thirty-gallon trash bag, in an attempt to increase effectiveness as a deterrent to solid waste acceptance, New Baltimore C&DD Landfill, Ltd. shall be subject to and agrees to pay the following Stipulated Civil Penalties in connection with each such violation:

1 st Violation	\$2,000.00
2 nd Violation	\$4,000.00
3 rd Violation	\$6,000.00

Any additional violation will be assessed an additional \$2,000.00 to the previous violation's fine, but not to exceed a civil penalty of \$10,000.00 (R.C. §3714.11(B)). Stipulated Civil Penalties due under this Agreement shall be paid by cashier's check, made payable to the "Hamilton County General Health District" and mailed to the Hamilton County General Health District, Attention: Tim Ingram, Health Commissioner, 250 William Howard Taft Road, 2nd Floor, Cincinnati, Ohio 45219 within thirty (30) days of the receipt of a Notice of Violation. If the penalty is not paid within thirty (30) days after the receipt of the Notice of Violation, a late fee of \$250.00 will be assessed. Payment of the stipulated civil

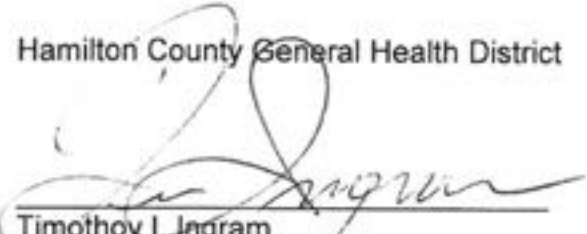
penalty and late fee, if applicable, shall be a complete resolution of the violation.

This Stipulated Civil Penalties Agreement will not be considered in the license year of 2012 if there are no violations of solid waste in the working face for the 4th quarter of 2010 thru the 3rd quarter of 2011 at the New Baltimore C&DD Landfill.

II. SIGNATORIES

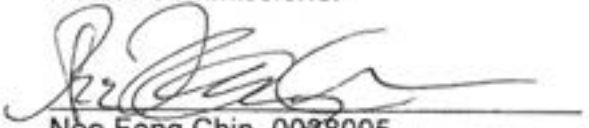
Each undersigned representative of the signatory to this Agreement certifies that he or she is fully authorized to enter into this Agreement and to legally bind such signatory to this document.

Hamilton County General Health District



Timothy L. Ingram
Health Commissioner

Date: 12-7-10



Nee Fong Chin, 0038095
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Chief Assistant Prosecuting Attorney
Counsel for the Hamilton County
General Health District and Board of Health

Date: December 7, 2010

New Baltimore C&DD Landfill, Ltd.

By: 

Ken Henke, President

Date: 12-6-10