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

News Release – For Immediate Release

ERAC Issues Judgment in Landfill Cases

(SENECA COUNTY, Jan. 30, 2025) – The Environmental Review Appeals Commission (ERAC) has issued a summary judgment deciding some of the issues based on written briefs in cases filed by WIN Waste Innovations of Seneca County against the Seneca County Board of Health seeking to invalidate all of the operating conditions in the Board of Health's 2023 and 2024 licenses for WIN Waste's landfill in Seneca County.

WIN Waste had contended that the Board of Health has no authority to include any conditions whatsoever in the licenses. The ERAC's decision repudiates that argument, finding that the Board of Health has the authority to include operating conditions in the licenses. ERAC also rejected WIN Waste's argument that federal railway law prohibits the Board of Health from regulating railcars present at the landfill. Additionally, ERAC dismissed WIN Waste's assertion that license conditions are allowed only to stop ongoing violations of law. This means the Board of Health is allowed to adopt license conditions aimed at proactively improving future compliance, not just stopping existing violations.

The decision upheld some important license conditions while invalidating others and determining that WIN Waste and the Board of Health must go to a hearing to decide on the remaining conditions. ERAC decided that the Board of Health does not have the authority to issue conditions designed to prevent air pollution and water pollution, narrowly reading the health district's authority to be limited to the regulation of solid waste issues. In that regard, ERAC ruled that the Board of Health cannot issue license conditions designed to ensure that the landfill's odor control system, dust controls, and water pollution controls are being properly maintained and operated. ERAC's decision states that WIN Waste cannot be required to provide copies of the landfill's air pollution and water pollution reports to Ohio EPA that the Board of Health had required to keep the health district informed about air pollution and water pollution problems at the landfill. It should be noted that Ohio EPA gave affidavits to WIN Waste's lawyers to use against the Board of Health on these and other issues in the cases.

Notably, ERAC's decision finds that the Board of Health has the legal authority to require WIN Waste to inspect the waste-filled railcars at the landfill for leaks and spills of waste-contaminated leachate, oil, and hydraulic fluids and to require the clean-up of any leaked or spilled contaminants. ERAC decided that the Board of Health has the authority to require the landfill to take the actions necessary to prevent and repair erosion, ponding, and leachate outbreaks. ERAC determined that the license conditions can require reasonable measures such as netting to prevent litter from flying off the railcars at the landfill and can require polluted liquids flowing out of the railcars during unloading to be contained and properly

disposed of to prevent them from escaping into soils and streams. ERAC also upheld a license condition requiring WIN Waste to notify the health district in advance of dumping the first layer of waste on top of new landfill liners so that the health district's inspector can watch the process to make sure sharp waste objects do not puncture the liners.

"While we are disappointed with some parts of the judgment, we are pleased with ERAC's decisions pertaining to actions necessary to improve future compliance and the ability to regulate railcars present at the landfill," said Seneca County Board of Health Vice President Robert Podach. "Railcars with considerable sized holes have been identified at WIN Waste, which can leak polluted leachate into the environment. Seneca County Board of Health and Seneca County General Health District will continue to monitor the landfill to ensure the safety and health of nearby residents and the environment."

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