Rumpke Sanitary Landfill, Inc. USACE/OEPA 401 Water Quality Certification Permit Comments

General Comments

Referencing the Description of Proposed Work:

- The 444 acre Rumpke Landfill has been in operation for 72 years. During that time, the landfill has expanded by an average of 6.17 acres/year. Rumpke requests expansion of 371 acres, nearly double the size of their existing landfill (84%). Although we accept that the expansion rate will vary by year, the request for 371 acres of additional capacity equates to a request to continue expansion for the next 60 years. **We believe this request is excessive, especially in light of tremendous capacity to improve recycling and reduce or recover the waste stream. A request to permit landfill expansion another 10 years, or until 2037 (beyond the existing permit to 2027), seems far more reasonable.**

- The request to fill approximately 32,912 linear feet of 56 streams, or 6-6.5 stream miles is excessive for one applicant. For any other permit, even a mile of fill material placed in on-site water resources would be considered a tremendous impact. If OEPA is considering issuance of a permit of this magnitude, **we request they provide information relating to other permits of this magnitude the state issues. What percentage of projects/permits involve dredging or fill of greater than 1 mile of stream system, let alone 6 miles?** Evaluation of such permitting decisions will reveal the excessive nature of this request.

Referencing Avoidance & Minimization:

- Although Rumpke may be required to comply with erosion control and storm water requirements following the NPDES (National Pollutant Discharge Elimination System) Program, these requirements have limitations. This is especially the case in locations such as the Banklick Creek watershed, where particle settling in basins takes longer due to the heavy clay content of soils. Therefore, as already evident in Stream 75, downstream of Rumpke's existing large storm water basin, **there will be additional sedimentation, down-cutting and erosion within stream systems.** The primary point here is that the larger the landfill footprint, the more impact there will be in downstream reaches, despite erosion and sediment control regulations currently on the books. We request that **during the construction phase, the sediment basin capacity and length of the storm water flow path be extended to account for clay particle settling time frames.** Also, the landfill and associated sediment storage areas would optimally **set back 100 feet from any waterways for sediment and pollutant removal purposes**. We realize this is far greater than is required by Hamilton County's riparian ordinance, but feel it is consistent with Rumpke's attempt to qualify for riparian corridor mitigation credit. Note that while in operation, there are always areas of the Rumpke landfill facility that would be considered active construction locations. When areas of the Rumpke site reach capacity and are no longer in active construction phase, the sediment basin may become a post construction storm water basin. In the post construction phase, it would be important that basins are sized for the 100

year storm event and storm water is slowly released to downstream reaches over a 24-48 hour period (basically adherence to the existing water quality volume criteria in the current Ohio EPA post construction storm water permit).

Referencing Threatened and Endangered Species:

- The Army Corps of Engineers notice indicates that "*This Public Notice serves as a request for concurrence from the US Fish and Wildlife Service ….. pursuant to Section 7© of the Endangered Species Act of 1972*". **We request evidence the fish and wildlife service provided concurrence with the endangered species review?**

<u>Comments on National Environmental Policy Act (NEPA) and Clean Water Act (CWA) Compliance</u>

- The Rumpke 401 permit application to OEPA indicates that "*the project purpose and need cannot be met through pursuit of unavoidable impacts to water resources or through a no-build alternative*". However, there is a vast difference between the proposed 371 acre project and a no-build scenario. Furthermore, the Corps' notice states under "Alternative Analysis" that "*No permit will be issued until our office determines practicable upland alternatives are not available.*" Concerning the extent of the landfill expansion, it should be noted that the need for waste disposal is based on waste generation. Increased recycling and waste recovery efforts certainly qualify as practicable alternative. Therefore, prior to issuance of this permit, we would like to have a better understanding concerning Rumpke efforts to economically incentivize recycling. **NEPA Section 101(b) (42 USC 4331)** provides a charge for government entities like OEPA and the Corps to "*enhance the quality of renewable resources and approach the maximum attainable recycling of depleted resources*." **What economic incentives are being provided for individuals, businesses and communities to reduce waste generation and increase recycling?** This question relates to the need for such a drastic environmental impact proposed in this permit. Additionally, it is part of thoroughly completing a 401 Water Quality Certification permit and Alternatives Analysis. Rumpke is receiving extensive revenue off of waste generation. **As a major waste disposal facility, and prior to issuance of another landfill expansion permit, we request a revision of their business model to provide greater incentives for recycling and waste recovery and/or impose fees for non-recycling.** We feel that more extensive recycling incentives and/or non-recycling penalties would considerably reduce the need for such extensive impact.

- **Regarding Solicitation of Comments:** The Army Corps' notice references the need to comply with NEPA (the National Environmental Policy Act) through evaluation of comments, used in preparation of an Environmental Assessment and/or Environmental Impact Statement. The "NEPA Process flow-chart" asks "*are environmental effects likely to be significant?*" We believe the answer to this question is "YES". Therefore, the flow-chart indicates that an Environmental Impact Statement should be prepared. **We request the preparation of Environmental Impact Statements (EIS) and Ohio Citizen Action requests to be included in the selection process if**

private consultants are involved in the assessment. We want to know who will be conducting the EIS. If the Corps and OEPA are considering documents already submitted as part of the 401 certification process as EIS statements, we believe these to be deficient and request that the applicant fully address our questions and concerns. We are making this request due to the fact that there are a wide range of competencies associated with consulting firms, which highly impacts the validity of data submitted to federal and state agencies.

Referencing Comments/Requests Associated with Permit Submittal

- **We request that OEPA biologists independently perform habitat and biological evaluations in the proposed landfill expansion area:**

    - Through evaluation of the primary headwater habitat stream assessment chart in Ohio EPA's Primary Headwater Habitat Manual, it appears that several of the Class II streams could be re-evaluated as Class III streams, which require greater protection. The Ohio EPA flowchart indicates that an HHEI score greater than or equal to 50 qualifies as Class III if some flow is evident and substrate content contains greater 10% of bedrock, boulder, boulder slabs and cobble. According to field data forms, several streams that meet this criteria. **Therefore, we request that fourteen (14) streams in the proposed expansion area, be evaluated for Class III status based on habitat scoring or be biologically re-evaluated for Class III status: Stream 1b, Stream 5 (upstream), Stream 5 (midstream/downstream), Stream 7, Stream 12 (downstream), Stream 19, Stream 28b (downstream), Stream 31, Stream 36, Stream 45, Stream 49 (downstream), Stream 65 (downstream), Stream 75 and Stream 79 (downstream).**

    - Please note that we base this request on reported findings from local biologists of stonefly (*Plecoptera*), mayfly (*Ephemeroptera*) and water penny (*Coleoptera*) larvae in nearby western Hamilton County headwater streams. It is highly suspect that very few to no such macroinvertebrates were reported in any of the assessed landfill expansion area streams.

    - **Class III headwater streams, based on an OEPA staff biological evaluation, should not be included in the landfill expansion/construction area.**

Referencing Stream Mitigation Plan/Approval

- Since water quality benefits of any mitigation effort depend upon the quality of the mitigation, **we request that an independent agent of a local nonprofit entity, knowledgeable in stream restoration, be involved in the evaluation of the stream mitigation projects, from construction planning through the mitigation monitoring phase.** It is not evident that streambank stabilization alone, nor previous restoration attempts on Rumpke properties, will contribute to enhancement of the biology. Therefore, we request that the applicant **provide proof through**

legitimate studies that stream bank stabilization can actually lead to an improvement in water quality and instream biology. We also request such proof for any such projects implemented through the Nature Conservancy In-Lieu Fee program.

- The Section 401 Water Quality Certification package indicates that 27,389 feet of stream credits are to be provided through purchase into the Nature Conservancy In-Lieu Fee Program. An adequate assessment of water quality improvements associated with debits/credits can't be made without an understanding of the proposed project and project location. **We request that the applicant provide project location information prior to approval of impacts based on the purchase of such credits.**

- The permit application indicates wetland restoration/creation of 0.44 acres based on the proposed on-site impacts. **We request evidence indicating the location of such restoration as well as a planting/monitoring plan, prior to any permit approval**. Furthermore, aerial photography indicates several open water areas that are not classified as wetlands. **We request evaluation of the edge areas/shorelines for hydrophytic vegetation and soils, as these could be considered wetland areas.**

- **On-site ephemeral stream mitigation**: The proposed perimeter berm/channel does not adequately compensate for forested ephemeral channels that are destroyed. In an active construction area, excessive amounts of sediment may be transported through this un-shaded perimeter channel to an outlet point. Although a sediment basin at the channel outlet may provide some sediment control, the desired connectivity to downstream reaches for transport of organic matter, will be lost. **We request that the Army Corps of Engineers and Ohio EPA deny the perimeter channel as a legitimate mitigation option. On construction sites, such a feature is generally considered part of the storm water conveyance system and does not serve as a future stream channel.**

- **Channel preservation credit**: Stream preservation credit should only be given where the riparian buffer exceeds that of existing regulation. For instance, there is an existing riparian corridor setback ordinance in Hamilton County. Furthermore, to receive mitigation credit, a 25-50 foot riparian buffer is minimal. To receive credit, especially on perennial or intermittent waterways, a 100 foot buffer should be required on both streambanks from the top of bank into the floodplain. Research supports this recommendation and this is especially important in filtering pollutants from a landfill site.

<u>Referencing Ohio Department of Natural Resources (ODNR) – Natural Heritage Database Request</u>

- The permit application indicates project consultation with the ODNR was initiated on July 21, 2017, yet later states ODNR provided their review on September 7, 2016. **We'd like an explanation of how ODNR could provide a review prior to the project consultation.**

- ODNR reports that the project is in the vicinity of several state threatened and endangered species, such as Kirtland's snake, cave salamander, American bittern, lark sparrow, Sloan's crayfish and Kramer's cave beetle. **We request that the site be surveyed by certified experts in each specific area (i.e. someone who has actually found each of these species in the wild, and can provide documented evidence).** Due to the vastness of the site, this should be a multiday to weeklong effort by species as it would be impossible to adequately look for such species in a few hours or a day.

Conclusion

We make these comments and requests on behalf of 32,000 dues paying members here in Ohio, many of whom rely on Rumpke for recycling services and waste disposal and many of whom enjoy outdoor recreation that depends upon healthy streams and waterways. These members expect us and the regulators in this room to thoroughly examine any potential threats to endangered species, water quality, biodiversity and public health.

Ohio Citizen Action has always questioned the need for such a significant expansion of this landfill, in light of the tremendous unrealized potential for reducing and recovering our waste stream. Rumpke is commonly listed as one of the top ten largest waste management companies in the U.S. As an undeniable giant in the industry, Rumpke has the resources to more aggressively invest and promote zero waste policies and practices. By allowing such a large expansion of their landfill, regulators undermine the company's motivation to do so.

I'd also like to point out that the pressure to expand in Colerain Township is exacerbated by Rumpke's practice of accepting large volumes of out-of-state waste. This practice fails to serve the residents of Southwest Ohio, especially the people who enjoy recreational activities on the Lower Great Miami River.

Therefore, if any expansion is to be permitted, we ask that all possible study and precaution occur, so that it is done with the least impact to wildlife, natural resources and human health.