

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

FILED BUTLER CO.
COURT OF COMMON PLEAS
MAR 09 2007
CINDY CARPENTER
CLERK OF COURTS

STATE OF OHIO, ex rel. JIM PETRO,
ATTORNEYGENERAL

: CASE NO. CV 2006 01 0078

Plaintiff,

: JUDGE: KEITH M. SPAETH

v.

:
:
:

OLD RIVER VALLEY PLACE OF
NATURE FOUNDATION

:

Defendant.

Agreed Order for Judgment

WHEREAS, Plaintiff State of Ohio, on relation of Jim Petro, Attorney General of Ohio, at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a Complaint commencing this action against Defendants Old Rives Valley Place of Nature Foundation ("Defendant Foundation") and Elfreda Schlichter ("Defendant Schlichter") to enforce the provisions of Ohio's solid waste laws set forth in Ohio Revised Code Chapter 3734 and the rules adopted pursuant to that chapter, and to pursue other legal and equitable relief;

WHEREAS Plaintiff State of Ohio voluntarily dismissed its action, with prejudice, as to Defendant Schlichter;

WHEREAS, Plaintiff and Defendant Foundation consent to the entry of this Order without trial of any issue of fact or law, and upon consent of the Parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the parties and the subject matter of this action pursuant to Chapters 3714 and 3734 of the Ohio Revised Code. Venue is proper in this Court. The Complaint states a claim upon which relief can be granted against Defendant Foundation.

II. PARTIES BOUND

2. The provisions of this Order shall apply to and be binding upon Plaintiff, Defendant Foundation, their successors in interest and assigns, and others to the extent provided by Civil Rule 65(D).

3. Nothing herein shall be construed to relieve Defendant Foundation of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances including but not limited to applicable permit requirements.

III. SATISFACTION OF LAWSUIT AND EFFECT OF ORDER

4. The State has alleged that Defendant Foundation violated Ohio Revised Code Chapters 3714 and 3734, Ohio Adm. Code Chapter 3745-400, and Ohio Adm. Code Chapter 3745-27.

5. Defendant Foundation admits liability with respect to Counts One through Four of Plaintiffs Complaint. Closure of Defendant Foundation's Landfill shall be performed in accordance with Ohio Adm. Code 3745-27-11.

6. Plaintiff State of Ohio agrees to dismiss, with prejudice, Counts Five through Fifteen of its Complaint.

7. Within thirty (30) days after entry of the Order, Defendant Foundation agrees to forfeit to Plaintiff State of Ohio all non real estate assets including, but not limited to, cash, annuities, insurance policies, stock, stock options, stock funds, money market funds, and bank

accounts of all types owned by Defendant Foundation.

8. Plaintiff State of Ohio is authorized to place a judgment lien on any and all parcels of real property owned by Defendant Foundation.

9. No later than April 30 of each year following entry of this Order, Defendant Foundation agrees to submit to Plaintiff State of Ohio income tax statements for the previous year, as well as a written inability-to-pay argument that specifically addresses financial reasons why injunctive relief cannot be performed and/or compliance costs cannot be paid. Plaintiff agrees to review the above documents submitted by Defendant Foundation to determine Defendant Foundation's ability to pay. The ability-to-pay analysis will take into consideration the estimated cost for closure and post-closure care at Defendant Foundation's Landfill.

10. Defendant Foundation agrees that earthen material (which is overburden) stockpiled upon and located on and/or within any parcels of property owned by Defendant Foundation shall not be sold or used for any purpose other than closure of Defendant Foundation's Landfill.

11. Defendant Foundation is authorized to accept donations, in the form of monetary donations or donations in kind, not to exceed ten thousand dollars (\$10,000) annually. Donations shall be only used for security, maintenance, upkeep and/or closure of Defendant Foundation's Landfill, in accordance with Ohio Adm. Code 3745-27-11. Plaintiff State of Ohio reserves the right to direct Defendant Foundation, in writing, to expend donations received toward specific security, maintenance, upkeep and/or closure activities. Defendant Foundation agrees that, in the event that Plaintiff directs Defendant Foundation in writing to perform a specific security, maintenance, upkeep and/or closure activity, Defendant Foundation shall utilize donations as they become available for the action specified by Plaintiff. Defendant Foundation shall submit to Plaintiff annually, no later than April 30, a report of all receipts and

expenditures from the previous year, to include a purpose of each expenditure.

12. Nothing in this Order shall be construed to limit the authority of the State to seek relief from Defendant Foundation for claims or violations not referenced in this Order, any violations arising out of acts or omissions first occurring after the entry date of this Order, or claims or violations under the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et. seq., R.C. 3734.20 through 3734.27, or for any emergency, removal, remedial, or corrective actions. Notwithstanding any provision in this Order to the contrary, Defendant Foundation retains all rights, defenses, and/or claims they may legally raise to the extent that the State seeks further relief from the Defendant Foundation in the future.

13. Plaintiff State of Ohio agrees that Trustees of Defendant Foundation are not personally liable for any of the Counts set out in the State's Complaint, and/or for any injunctive relief, damages and/or penalties with respect to this case.

14. The parties agree that this Agreed Order for Judgment resolves all outstanding charges filed in Butler County Case No. CV 2006 01 0078, and comprises all terms agreed to by the parties .

IV. COMMERCIAL ENTERPRISES

15. Any and all potential income-generating commercial enterprises on Defendant Foundation's property must have prior approval, in writing, from the Director of Ohio Environmental Protection Agency. Proposals for potential income-generating commercial enterprises on any parcel of Defendant Foundation's property must be submitted to the Director of Ohio EPA pursuant to Ohio Adm. Code 3745-27-13.

16. All proceeds from income-generating commercial enterprises on Defendant

Foundation's property must be used for security and/or maintenance and upkeep of Defendant Foundation's Landfill, or used for closure and post-closure care of Defendant Foundation's Landfill. Plaintiff State of Ohio reserves the right to direct Defendant Foundation, in writing, to expend donations received toward specific security, maintenance, closure and/or post closure activities. Defendant Foundation agrees that, in the event that Plaintiff directs Defendant Foundation in writing to perform a specific security, maintenance, closure and/or post closure activity, Defendant Foundation shall utilize proceeds as they become available for the activity specified by Plaintiff.

V. NOTICES

17. All documents required to be submitted under this Order shall be submitted to the following, or their successors:

As to Plaintiff State of Ohio.

Ohio Environmental Protection Agency
Southwest District Office
Solid Waste Supervisor
401 East Fifth Street
Dayton, OH 45402

Ohio Environmental Protection Agency
Compliance Monitoring and Enforcement Unit
50 W. Town St. Suite 700
P.O. Box 1049
Columbus, OH 43215

As to Defendant Foundation:

Old River Valley Place of Nature Foundation
429 Ross Avenue
Hamilton, Ohio 45013

VI. COSTS

18. Defendant Foundation is hereby ordered to pay the court costs of this action. Each party shall be responsible for its own attorneys' fees and consultants' fees associated with this

action.

VII. SITE ACCESS

19. Defendant Foundation agrees and consents that Ohio Environmental Protection Agency, United States Environmental Protection Agency, and their employees and agents, shall have full access to Defendant Foundation's property at all reasonable times without the need for a warrant, as may be necessary for the implementation of this Order and/or to monitor compliance with this Order and/or Ohio environmental laws. Defendant Foundation agrees and consents that any and all contractors, subcontractors, consultants, or other persons working for or on behalf of Ohio Environmental Protection Agency or United States Environmental Protection Agency shall have full access to Defendant Foundation's property at all reasonable times without the need for a warrant, as may be necessary to perform inspections, closure, post-closure care, sampling, monitoring, remediation and/or emergency response work.

20. Paragraph 19 of this Order shall not be construed to eliminate or restrict any right Ohio Environmental Protection Agency may otherwise have under Federal or State law to seek access to Defendant Foundation's property.

VIII. RETENTION OF JURISDICTION

21. This Court shall retain jurisdiction of this action for the purposes of making any order or decree which it deems appropriate to carry out this Order.

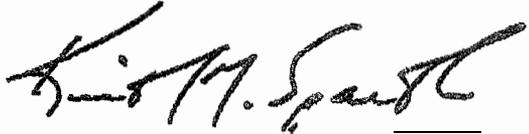
IX. SIGNATORIES

22. Each of the undersigned representatives for the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Order and legally bind the respective Party to this document.

X. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

23. Upon the signing of this Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon all Parties notice of judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

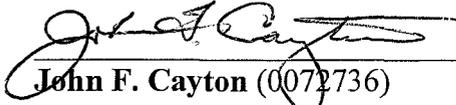
IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Keith M. Spaeth", written over a horizontal line.

**Judge Keith M. Spaeth
Butler County Court of Common Pleas**

APPROVED BY:

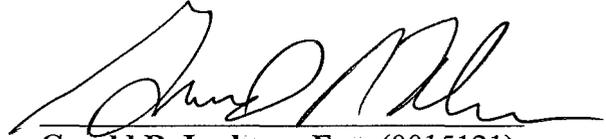
Marc Dann
Attorney General of Ohio



John F. Cayton (0072736)
Assistant Attorney General
Environmental Enforcement Section
1 Government Center, Suite 1340
Toledo, Ohio 43604
Telephone: (419) 245-2550
Facsimile: (419) 245-2520

George Horvath (0030466)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215
Telephone: (614) 466-2766
Facsimile: (614) 644-1926

Attorneys for State of Ohio



Gerald R. Leshner, Esq. (0015121)
1244 Nilles Road, Suite 9
Fairfield, OH 45014
Telephone: (513) 939-3300
Facsimile: (513) 939-3301

*Attorney for Old River Valley Place of
Nature Foundation*