

IN THE COURT OF COMMON PLEAS
SENECA COUNTY, OHIO

STATE OF OHIO, *ex rel.*
BETTY D. MONTGOMERY,
ATTORNEY GENERAL OF OHIO,

Plaintiff,

-v-

HOCKING ENVIRONMENTAL CO.,

Defendant.

CASE NO:

54039

JUDGE:

JUDGE STEVE C. SHUF

CONSENT ORDER

Plaintiff State of Ohio, on relation of Betty D. Montgomery, Attorney General of Ohio, having filed the Complaint in this action against Hocking Environmental Company (“Defendant”) to enforce Ohio’s solid waste laws as found in Chapter 3734 of the Revised Code and the rules promulgated thereunder; and Plaintiff and Defendant having consented to the entry of this Order;

THEREFORE, without adjudication or admission of any issue of law or of fact, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. **“Consent Order”** or **“Order”** means this Consent Order and Final Judgment Entry and all appendices hereto. In the event of conflict between this order and any appendix, the Order shall control.

2. **“Director”** means the Director of the Ohio Environmental Protection Agency.

3. **“San Lan Landfill”** refers to the solid waste facility, including all areas of waste placement since the facility’s inception, operated by the Hocking Environmental Company, in Seneca County, Ohio, located at 12500 W. Seneca County Road 18 in Fostoria, Ohio.

4. **“Ohio EPA”** means the Ohio Environmental Protection Agency.

II. JURISDICTION

5. The Court has jurisdiction over the subject matter of this action pursuant to R.C. Chapter 3734 and the rules promulgated thereunder. The Court has jurisdiction over the parties to this action. Venue is proper in this Court. The Complaint states a claim for which relief can be granted.

III. PERSONS BOUND

6. The provisions of this Consent Order shall be binding upon the Defendant, its assigns and successors in interest.

IV. SATISFACTION OF LAWSUIT

7. Except as otherwise provided in this Consent Order, compliance with the terms of this consent order shall constitute full satisfaction of any civil liability of Defendant to Plaintiff for all claims alleged in the Complaint.

V. RESERVATION OF RIGHTS

8. Nothing in this Consent Order shall limit the authority of the State of Ohio to:
- (a) Seek relief for claims or conditions not alleged in the Complaint or for claims or conditions which did not arise or exist prior to entry of this Consent Order;
 - (b) seek relief for violations of law or conditions alleged in the Complaint which occur after the entry of this Consent Order;

- (c) Enforce this Consent Order through a contempt action or otherwise for violations of this Consent Order;
- (d) Take any action authorized by law against any person, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, *et seq.* and/or R.C. 3734.20 through 3734.27 to: (1) recover natural resource damages and/or (2) order the performance of, and/or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order;
- (e) Take any action authorized by law against any person, including Defendant, to eliminate or mitigate conditions at the San Lan Landfill, which may present an imminent threat to the public health or welfare or the environment.

9. Nothing herein shall constitute a waiver of any right or defense Defendant may have to any action brought by the State of Ohio under the: claims outlined in Paragraph 8, above.

10. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with it does not constitute an admission by Defendant of any factual or legal matters or opinions set forth herein or in the Complaint. Defendant does not admit liability under Ohio law or any other applicable law, rule or regulation for any purpose or admit any issues of fact or law, any wrongdoing, or any responsibility with regard to the San Lan Landfill. Defendant does not admit, and reserves its rights to contest or legally challenge, jurisdiction and venue with regard to activities not required or contemplated by this Consent Order. Nothing herein absolves Defendant from its duty to comply with the Consent Order.

11. Defendant reserves all rights that it may have: against any other person under all federal, state, local, and common laws.

12. The State of Ohio reserves all rights that it may have against any person other than Defendant.

VI. INJUNCTIVE RELIEF

13. Defendant agrees and is hereby ordered and enjoined to comply with the provisions of R.C. Chapter 3734 and the regulations promulgated thereunder.

14. Defendant agrees and is hereby ordered and enjoined to complete the final cap system at the North slope of Phase I of the San Lan Landfill in accordance with PTI #03-6324 dated March 1, 1994, and Ohio Adm.Code 3745-27-19(H) by December 31, 2001.

15. Defendant agrees and is hereby ordered and enjoined to complete the final cap system at the West slope of Phase I of the San Lan Landfill in accordance with PTI #03-6324 dated March 1, 1994, and Ohio Adm.Code 3745-27-19(H) by September 30, 2002.

16. Within twenty-one (21) days of the entry of this Consent Order, Defendant agrees and is hereby ordered and enjoined to submit to Ohio EPA a Ground Water Quality Assessment Plan ("GWQAP") for the San Lan Landfill that complies with the requirements of Ohio Adm.Code 3745-27-10(E). Defendant further agrees and is hereby ordered and enjoined to implement the GWQAP immediately after Ohio EPA notifies Defendant that Ohio EPA concurs with the GWQAP. If Ohio EPA determines that the GWQAP submitted by Defendant does not meet the requirements of Ohio Adm.Code 3745-27-10(E), Ohio EPA will send a Notice of Deficiency ("NOD") letter to Defendant outlining changes that must be made for the GWQAP to comply with Ohio Adm.Code 3745-27-10(E). If Ohio EPA sends a NOD letter to Defendant with changes to the GWQAP, Defendant agrees and is hereby ordered and enjoined to reply to the NOD letter within fourteen (14) days after receipt thereof. If Ohio EPA is required to send more than two (2) NOD letters to the Defendant outlining necessary modifications to the

GWQAP, Ohio EPA will thereafter make the necessary modifications to the GWQAP and notify Defendant of the corrected GWQAP. In that event, Defendant agrees and is hereby ordered and enjoined to implement the corrected GWQAP immediately upon receipt of the corrected GWQAP.

17. Defendant agrees and is hereby ordered and enjoined to comply with the provisions of R.C. 3734.57(A) by collecting the solid waste disposal fees, levied upon disposal, as a trustee for the State of Ohio, and forwarding those fees to the Director within thirty (30) days of the last day of the month in which the fees were collected, as indicated on the monthly return required to be filed pursuant to R.C. 3734.57(A).

18. Within one (1) year and one hundred eighty (180) days of the entry of this Consent Order, Defendant agrees and is ordered to pay \$126,400.00 in late fees assessed pursuant to R.C. 3734.57(A). All payments pursuant to this paragraph shall be made by Defendant by delivering to Plaintiff, c/o Jena Suhadolnik or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215 -3428, a certified check payable to the order of "Treasurer, State of Ohio," in the amounts indicated in the following schedule:

- a) Within ninety (90) days of the entry of this Consent Order, Defendant shall pay \$21,066.66.
- b) After ninety-one (91) days but no later than one hundred eighty (180) days of the entry of this Consent Order, Defendant shall pay \$21,066.66.
- c) After one hundred eighty-one (181) days but no later than two hundred seventy (270) days of the entry of this Consent Order, Defendant shall pay \$21,066.66.
- d) After two hundred seventy one (271) days but no later than one (1) year of the entry of this Consent Order, Defendant shall pay \$21,066.66.

- e) After one (1) year one (1) day but no later than one (1) year ninety (90) days of the entry of this Consent Order, Defendant shall pay \$21,066.66.
- f) After one (1) year ninety-one (91) days but no later than one (1) year one hundred eighty (1 SO) days of the entry of this Consent Order, Defendant shall pay \$21,066.70.

The late fees paid pursuant to this paragraph shall be deposited into the Solid Waste Fund.

VII. SUBMITTAL OF DOCUMENTS

19. All documents required to be submitted to Ohio EPA pursuant to this Consent Order shall be submitted to the following address, or to such addresses(es) as Ohio EPA may hereafter designate in writing:

Ohio EPA
Northwest District Office
347 N. Dunbridge Road
Bowling Green, OH 43402
Attn: Beth Brown

VIII. CIVIL PENALTY

20. Defendant agrees and is hereby ordered and enjoined to pay to the Ohio EPA a civil penalty in the amount of \$33,600.00, within thirty (30) days of entry of this Consent Order by delivering to Plaintiff, c/o Jena Suhadolnik or her successor, Office of the Attorney General, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3428, a certified check in the full amount, payable to the order of "Treasurer, State of Ohio." This civil penalty shall be deposited into the hazardous waste clean-up fund created in R.C. 3734.28

IX. STIPULATED PENALTIES

21. If Defendant fails to comply with a requirement of this Consent Order, Defendant is liable for and shall immediately pay stipulated penalties according to the following schedule:

for each day of each failure to meet a requirement, for which the failure continues up to thirty (30) days - one hundred dollars (\$100.00) per day; for each day of each failure to meet a requirement for which failure continues from thirty-one (31) to sixty (60) days - two hundred dollars (\$200.00) per day; for each day of each failure to meet a requirement for which the failure continues from sixty-one (61) to ninety (90) days - five hundred dollars (\$500.00) per day; for each day of each failure to meet a requirement for which the failure continues over ninety (90) days - one thousand dollars (\$1,000.00) per day.

22. Stipulated penalties due under this Consent Order shall be paid by certified check or money order, payable to the order of "Treasurer, State of Ohio," and mailed to Jena Suhadolnik or her successor, Administrative Assistant, Office of the Attorney General, Environmental Enforcement Section, 30 E. Broad St., 25th Fl., Columbus, OH 43266-0410 within ten (10) days of the occurrence of the failure to comply with this Order as described above.

X. **POTENTIAL FORCE MAJEURE**

23. If any event occurs that causes or may cause a delay of any requirement of this Consent Order, Defendant shall notify the Ohio EPA, Northwest District Office, in writing within ten (10) days of the event or as soon as practical, describing in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Defendant to prevent or minimize the delay and the timetable by which measures will be implemented. Defendant will adopt all reasonable measures to avoid or minimize any such delay.

24. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons

entirely beyond its control such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time that an action to enforce the terms and conditions of this Consent Order, if any, is commenced by the Plaintiff. At that time, the burden of proving that any delay was or will be caused by circumstances entirely beyond the control of Defendant shall rest with Defendant. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Failure by Defendant to comply with the notice requirements of Paragraph 23 shall render this Paragraph 24 void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendant's right to request an extension of its obligations under this Consent Order based on such incident. An extension of one compliance date based on a particular incident does not mean that Defendant qualifies for an extension of a subsequent compliance date or dates. Defendant must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought.

XI. TERMINATION OF THIS CONSENT ORDER

25. At any time after completion of the requirements set forth in Paragraphs 14, 15, 16, 18 and 20, above, Defendant may seek to terminate this Consent Order. Defendant may seek such termination only by filing a motion with this Court pursuant to Civ.R. 60(B)(4). Plaintiff and Ohio EPA reserve the right to oppose said motion. Any motion to terminate this Consent

Order may be granted only if the requirements of Civ.R. 60(B)(4) are satisfied and (1) Plaintiff and Ohio EPA agree to the termination, or (2) Defendant demonstrates that Defendant has satisfied the requirements of Paragraphs 14, 15, 16, 18 and 20 of this Consent Order.

XII. RETENTION OF JURISDICTION

26. This Court will retain jurisdiction of this action for the purpose of enforcing this Consent Order.

XIII. COSTS

27. Defendant is hereby ordered to pay the court costs of this action.

XIV. SIGNATORIES

28. The undersigned parties certify that they have read and understand the terms and conditions of this Consent Order, and that they have not been threatened or offered anything for their consent herewith.

IT SO ORDERED THIS 23 DAY OF October, 2001.



JUDGE
SENECA COUNTY
COURT OF COMMON PLEAS

APPROVED BY:

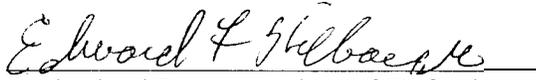
BETTY D. MONTGOMERY
ATTORNEY GENERAL OF OHIO



SHAUN K. PETERSEN (0072444)
MICHAEL E. IDZKOWSKI (0062839)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3428
(614) 466-2766
*Attorneys for Plaintiff
State of Ohio*



ROBERT J. STYDUHAR (0012073)
VORYS, SATER, SEYMOUR & PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1 008
(614) 464-8395
*Attorney for Defendant
Hocking Environmental Company*



Authorized Representative of Defendant
Hocking Environmental Company