

Judgment

IN THE COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

STATE OF OHIO, ex rel.
ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO,

Plaintiff,

v.

BROWNING FERRIS INDUSTRIES
OF OHIO, INC.

Defendant.

Case No. 89-CI-91

JUDGE JAMES E. THIERRY

CONSENT DECREE

FILED
COMMON PLEAS COURT
1989 DEC 29 A 11:24
SHALEY J. MESSING
CLERK OF COURT
OTTAWA COUNTY, OHIO

This Consent Decree is made and entered into by and between Plaintiff, State of Ohio, on relation of its Attorney General, Anthony J. Celebrezze, Jr. ("State or Plaintiff"), and the Defendant Browning Ferris Industries of Ohio, Inc. ("BFI")

WHEREAS, the State of Ohio filed a Complaint on May 12, 1989 in this Court against the Defendant seeking civil penalties and injunctive relief for violations of Chapter 3734 of the Ohio Revised Code, (hereinafter "O.R.C.") and regulations within the Ohio Administrative Code (hereinafter "O.A.C.") adopted thereunder.

WHEREAS, the parties have determined that House Bill 592, Section 6(C)(1) as enacted on June 24, 1988 sets forth that no owner or operator of a solid waste facility shall dispose of any solid waste in excess of the maximum daily amount certified for the month of March of 1988 during the period of one year

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after the effective date of House Bill 592 or until the submission of a resolution or agreement to the Director of the Ohio Environmental Protection Agency establishing a Solid Waste Management District.

WHEREAS, the maximum daily amount of solid waste which Defendant Browning Ferris Industries of Ohio, Inc. was allowed to accept for disposal at their Ottawa facility was certified by BFI to the Director of Ohio EPA on July 21, 1988 to be 5,171 cubic yards or 1,723.3 tons.

WHEREAS, Plaintiff, alleged in its Complaint that Defendant BFI accepted and disposed of solid waste from July 21, 1988 to April 4, 1989 in excess of their certified maximum daily amount of 5,171 cubic yards or 1,723.3 tons.

WHEREAS, the parties have determined that the resolution of the exceedences by Defendant BFI and the resolution of the State's claims against BFI as set forth in Plaintiff's Complaint can be achieved through the use of this Consent Decree.

WHEREAS, the parties intend to further the public interest in the operation of solid waste facilities as commanded by the Ohio General Assembly by enacting House Bill 592 and the parties agree that the settlement and entry of this Consent Decree is made in good faith to avoid prolonged and complicated litigation between the parties, without admission of liability and to settle and resolve all claims which were or are disputed; and

WHEREAS, in consideration of, and in exchange for the promises and mutual undertakings and covenants herein, and intending to be bound legally hereby, the Plaintiff, State of Ohio and Defendant, Browning Ferris Industries of Ohio, Inc. by their authorized representatives, have agreed to entry of this Consent Decree.

NOW, THEREFORE, before the taking of any testimony, upon the pleadings and without trial before this Court on any issue of law or fact and upon the mutual consent of the parties hereto it is

HEREBY ORDERED, ADJUDGED, and DECREED as follows:

I. STATEMENT OF PURPOSE

1. In entering into this Consent Decree, the mutual objective of the Plaintiff and Defendant is to have Defendant fully comply with all Ohio solid waste laws and regulations adopted thereto, in the operation of Defendants solid waste facility located at 530 North Camp Road, Port Clinton, Erie Township, Ottawa County, Ohio.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the parties and the subject matter of this case, which the parties consent thereto. Plaintiff's Complaint states a claim which relief can be granted against Defendant by this Court pursuant to Sections 3734.11 and 3734.13 of the Ohio Revised Code. Venue is proper in this Court.

III. CONTINUING JURISDICTION

3. This Court shall retain jurisdiction of this action for the purpose of making any order or decree which it may deem at any time to be necessary to carry out the Consent Decree and either party may move this Court for said order. Either party to this Decree may apply to the Court for enforcement or modification of the provisions and terms of this Decree, including all resolutions of disputes arising under the Decree as well as the ability of a party to comply with all terms and conditions.

IV. PERSONS BOUND

4. This Consent Decree applies to and is binding upon the Defendant, Browning Ferris Industries of Ohio, Inc., their assigns, successors in interest, officers, directors, agents, representatives, servants, employees, contractors, consultants, subsidiaries or divisions, and/or all persons, firms or corporations who act in concert or privity with the Defendant, employees and their successors and assigns.

V. SATISFACTION OF CLAIMS

5. Compliance with the terms of this Consent Decree shall constitute full satisfaction of any civil or administrative liability of Defendant to the Plaintiff for all claims stated in Plaintiff's Complaint up to and until the date of entry of this Decree as to all activities and conduct at Defendants' solid waste facility located at 530 North Camp Road, Port Clinton, Erie Township, Ottawa County, Ohio.

6. This Consent Decree shall not be construed so as to preclude the Plaintiff from taking any civil, criminal and/or administrative enforcement action pursuant to any available legal authority, including the right to seek monetary, injunctive, or other relief against Defendant for environmental violations other than those violations as stated in the Plaintiff's Complaint against Defendant in this case and as identified by Ohio EPA through inspections, information requests, self-reporting requirements or any other means of regulatory oversight. Nothing in this Consent Decree shall be construed to prevent the Plaintiff or Defendant from seeking any form of relief whatsoever or to pursue any claims against other parties who may or may not be responsible for any environmental damage at Defendants' facility.

VI. COMMITMENT OF DEFENDANTS

7. Defendant is ordered to and agree to undertake and ensure performance of their obligations under this Consent Decree, and further are ordered and agree to perform all of these obligations at their expense.

8. Defendant is ordered to and agrees to assume all liability arising from or relating to all acts or omissions in the performance of the work as set forth in this Consent Decree or the failure to perform fully or completely the requisite requirements as set forth under this Consent Decree.

VII. INJUNCTIVE RELIEF

9. Defendant BFI is ordered to immediately comply with all provisions of the Ohio Revised Code and Ohio Administrative Code in relation to the acceptance and disposal of solid waste at their Ottawa County solid waste facility.

10. Unless prior written approval has been received from the Director of OEPA, Defendant BFI is ordered not to exceed a maximum daily waste receipt limit of 6,207 cubic yards per day or 2,069 tons.

11. If Defendant decides to accept and dispose of solid waste in exceedance of its maximum daily waste receipt limit of 6,207 cubic yards per day or 2,069 tons per day then Defendant must receive prior written approval from the Director of Ohio EPA.

12. Defendants is ordered to submit true and accurate daily waste receipt reports to the Ohio EPA as required by law and said reports shall be made available to representatives of the Ohio EPA upon request during normal business hours.

VIII. CIVIL PENALTIES AND COSTS

13. Defendant is ordered to pay a civil penalty of one hundred twenty-five thousand dollars (\$125,000) to Plaintiff, State of Ohio by delivering, within thirty (30) days from entry of this Consent Decree on this Court's journal, to Plaintiffs counsel or his successor, at the office of the Ohio Attorney General, 30 East Broad Street, 25th Floor, Columbus, Ohio

43266-0410, a certified check in the amount of one hundred thousand dollars (\$100,000.00) made payable to the order of "Treasurer, State of Ohio." And a check in the amount of twenty-five thousand dollars (\$25,000.00) made payable to the order of "Ottawa County Auditor, James G. Snider" with a notation indicating the funds are for the Ottawa, Seneca and Sandusky counties Solid Waste Management District.

14. Defendant is ordered to bear the reasonable court costs of this matter.

IX. STIPULATED PENALTIES

15. Defendant shall be liable to Plaintiff, State of Ohio for payment of stipulated penalties as set forth in the following provision of this Consent Decree unless specifically waived by the Ohio EPA. Payment of Stipulated Penalties will be required upon receipt of written notification from Ohio EPA or their counsel of any violations of this Consent Decree and the amount of stipulated penalties. Payment of stipulated penalties shall be accomplished by delivering to Plaintiff's counsel (or his successor in the office of the Ohio Attorney General), a certified check in the specified amount payable to the order of "Treasurer, State of Ohio". Plaintiff, State of Ohio does not waive any rights it may have in addressing violations of this Consent Decree by seeking a contempt action before this Court or other enforcement actions pursuant to the Ohio Revised Code and regulations adopted thereunder.

16. For each day that Defendant exceeds their maximum daily waste receipt limit without receiving prior written approval from the Director of Ohio EPA, Defendant shall be assessed a stipulated penalty of five thousand dollars (\$5000.00) per day.


17. For each day that Defendant fails to pay the civil penalty as set forth in Provision VIII of this Consent Decree Defendant shall be assessed 10% interest per day on the total amount of the civil penalty due and owing to the State.

X. MISCELLANEOUS

18. Unless this Consent Decree expressly provides otherwise, Defendants' duties and obligations under this Consent Decree become effective upon this Consent Decree entry in this Court's journal.

19. Notwithstanding any other provisions of this Consent Decree, the State of Ohio reserves the right to institute new proceedings against Defendants for future violations of the State's environmental laws and regulations and to seek such injunctive relief and penalties as is just and necessary.

ENTERED THIS 28 DAY OF Dec., 1989.


JUDGE, COURT OF COMMON PLEAS
OTTAWA COUNTY, OHIO

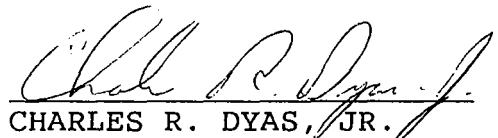
By the signatures below each parties name, consent to this decree is hereby given:

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

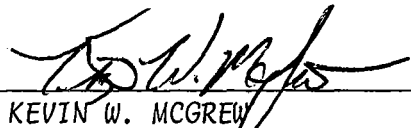
BROWNING FERRIS INDUSTRIES OF
OHIO, INC.

BY:



CHARLES R. DYAS, JR.
Assistant Attorney General
Environmental Enforcement
Section
30 East Broad Street, 25th Fl.
Columbus, Ohio 43266-0410
(614) 466-2766

By:



KEVIN W. MCGREW
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