

IN THE COURT OF COMMON PLEAS
PAULDING COUNTY, OHIO

STATE OF OHIO, ex rel. : CASE NO. CI-97-191
BETTY D. MONTGOMERY, :
ATTORNEY GENERAL OF OHIO : JUDGE WEBB
:
Plaintiff, :
:
vs. :
BRICE CARNAHAN, :
Defendant. :

FILED
98 APR -2 AM 8:56
CLERK OF COURTS
ELEANOR J. EDWARDS
PAULDING COUNTY OHIO

CONSENT ORDER

Plaintiff State of Ohio, through Ohio Attorney General, Betty D. Montgomery (hereinafter "the State"), at the written request of the Director of Environmental Protection, having filed a Complaint against Defendant Brice Carnahan, alleging violations of Chapter 3734 of the Ohio Revised Code ("R.C.") and the rules promulgated thereunder, and the parties having consented to the entry of this Order,

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

I. DEFINITIONS

For purposes of this Consent Order, "Site 1" shall mean Parcel #08-17A-032-00 located South of County Road 138 near the Village of Charloe, Paulding County, Ohio. "Site 2" shall mean Parcel #08-05-027-00 located on the West side of Township Road 169, South of Township Road 166 and North of Township Road 148 in Section 5 of Brown Township, Paulding County, Ohio. Unless otherwise specified, the administrative rules referenced in this Consent Order shall

refer to the rules currently effective on the date of the entry of this Consent Order.

II. JURISDICTION & VENUE

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

III. PARTIES

2. The provisions of this Consent Order shall apply and be binding upon the parties to this action, their agents, officers, employees, assigns, successors in interest and any person acting in concern, privity or participation with them who receives notice of this Consent Order whether by personal service or otherwise. Mr. Carnahan shall provide a copy of this Consent Order to each contractor he employs to perform the work itemized herein.

IV. SATISFACTION OF LAWSUIT & RESERVATION OF RIGHTS

3. The State has alleged in its Complaint that Mr. Carnahan has violated R.C. Chapter 3734, and the rules adopted thereunder. Except as provided herein, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Mr. Carnahan for those claims that have been alleged in the Complaint.

4. The Consent Order shall not be construed to act as a bar to the authority of the State to seek relief, by separate action or by charges in contempt, for future violations of law, or violations of this Order.

5. Nothing in this Consent Order and Final Judgment shall limit the authority of the State of Ohio to:

A. Seek any relief for claims or conditions not alleged in the

complaint;

- B. Seek any relief for violations of law or conditions alleged in the complaint which occur after the entry of this Consent Order and Final Judgment Entry;
- C. Enforce this Consent Order and Final Judgment Entry through a contempt action or otherwise for violations of this Consent Order and Final Judgment Entry;
- D. Seek further relief for groundwater contamination or other contamination caused by Mr. Carnahan at Site 1 and/or Site 2 which may be discovered after the entry of this Consent Order;
- E. Bring any action against Mr. Carnahan or against any other person, under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended, 42 U.S.C. § 9601, et seq., R.C. §§ 3734.20 through 3734.27, or R.C. Chapter 6111. to: (1) recover natural resource damages, or (2) order the performance of, or recover costs for any removal, remedial or corrective activities not conducted pursuant to the terms of this Consent Order and Final Judgment Entry, or both; and,
- F. Take any action authorized by law against any person, including Mr. Carnahan, to eliminate or mitigate conditions at Site 1 and/or Site 2, which may present an imminent threat to the public health and safety and the environment.

V. PERMANENT INJUNCTION FOR COMPLIANCE WITH OHIO'S SOLID WASTE STATUTES AND RULES

6. Mr. Carnahan is ordered and permanently enjoined to comply with R.C. Chapter 3734 and the rules promulgated thereunder. In addition, Mr. Carnahan is hereby ordered and permanently enjoined to comply with Ohio Revised Code §§ 3734.02 (unlawful operation of a solid waste disposal facility), 3734.03 (open burning and open dumping), 3704.05 (air pollution) and 3767.02 (nuisance).

VI. REMEDIAL ACTIVITIES

7. Mr. Carnahan is ordered and enjoined to achieve compliance with O.R.C. §§ 3734.02, 3734.03, 3704.05, and 3767.02 on or before July 15, 1998 by completing the following activities:

- a. Remove all solid waste which has been open dumped on Site 1 and Site 2 to a licensed solid waste disposal facility. Mr. Carnahan shall provide receipts verifying the deposition of this waste in a solid waste disposal facility to the Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215, Attn: Karl F.C.Colón.
- b. Pay a civil penalty of One Thousand Five Hundred Dollars (\$1,500.00) pursuant to Ohio Revised Code § 3734.11. This civil penalty is suspended, and Mr. Carnahan is hereby ordered to pay the sum of One Thousand Five Hundred Dollars (\$1,500.00) into the Paulding Disposal/Ohio EPA Closure Trust Fund, Account No. 69000300. Mr. Carnahan shall make such payment by sending a check payable to the order of Community 1st Trust and Bank, account no. 2100580441, Cherie Detmon, Trustee, Community 1st Trust and Bank, PO Box 250, Paulding, Ohio 45879. Payment shall be made on or before July 15, 1998.

VII. RESPONSES TO OHIO EPA COMMENT LETTERS

8. If the Ohio EPA sends any comment letters or requests for further information to Mr. Carnahan, or notifies Mr. Carnahan of any deficiencies regarding any plans or documents required under this Order, Mr. Carnahan shall fully respond and correct any deficiencies within thirty (30) days, unless this Order specifies a different response time. Ohio EPA may extend Mr. Carnahan's response time.

VIII. COMPLIANCE WITH APPLICABLE LAWS

9. Nothing in this Order shall affect Mr. Carnahan's obligation to comply with all applicable federal, state or local law, regulation, rule or ordinance. Mr. Carnahan shall obtain

any federal, state, or local permits necessary to comply with this Order.

IX. RETENTION AND SUBMITTAL OF DOCUMENTS

10. All documents which must be generated as a result of this Consent Order must be maintained by Mr. Carnahan at his residence on Site 1. All such documents must be made available to Ohio EPA during inspections, or as otherwise requested.

11. Documents which must be submitted or resubmitted under this Order shall be provided to the following:

Ohio Environmental Protection Agency
Division of Solid and Infectious Waste Management
Attention: Enforcement Coordinator
P.O. Box 1049
Columbus, OH 43216-1049

and

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
Attention: Group Leader
347 North Dunbridge Road
Bowling Green, OH 43402

X. CONTINUING JURISDICTION

12. This Court shall retain jurisdiction over this action for the purposes of enforcing this Consent Order.

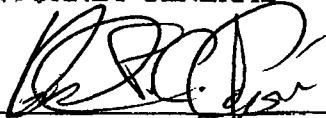
XI. COURT COSTS

13. Defendants shall pay the court costs of this action.

IT IS SO ORDERED 


Hon. J. David Webb, Judge
Paulding County Court of Common Pleas

BETTY D. MONTGOMERY
ATTORNEY GENERAL


KARL F. C. COLON (0059925)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-2766

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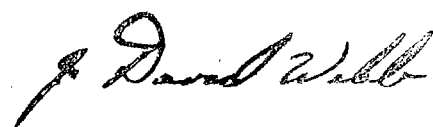

JAMES S. BORLAND (0018967)
BORLAND & HAVER
509 Second Street
Defiance, Ohio 43512
(419) 782-7757

Counsel for Defendant
Brice Carnahan

Counsel for Plaintiff
State of Ohio

TO THE CLERK OF COURTS

Pursuant to Ohio Rule of Civil Procedure 58(A), the Clerk of Courts is hereby directed to enter the judgment into the journal of the Court and to give notice of the filing of this judgment to the parties pursuant to Ohio Rule of Civil Procedure 58(B).



Hon. J. David Webb, Judge
Paulding County Court of Common Pleas

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